

No. 7695

United States

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Circuit Court of Appeals

For the Ninth Circuit.

GUS B. GREENBAUM, CHARLES GREEN-
BAUM and WILLIAM GREENBAUM,

Appellants,

UNITED STATES OF AMERICA,

Appellee.


Transcript of Record

Upon Appeal from the United States District Court
for the District of Arizona.

FILED

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PAUL P. O'BRIEN,
Clerk



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the District of Arizona.

C-4879-Phoenix.

UNITED STATES OF AMERICA,

Plaintiff,

—vs—

A. E. SANDERS, H. D. SANDERS, GUS B.
GREENBAUM, CHARLES GREENBAUM,
WILLIAM GREENBAUM,

Defendants.

INDICTMENT.

Violation: Section 338, United States Code, Title
18. (Use of United States Mails in furtherance
of a scheme to defraud)

United States of America,
District of Arizona.—ss.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE DISTRICT
OF ARIZONA. AT THE NOVEMBER
TERM THEREOF, A.D. 1932.

The Grand Jurors of the United States, impan-
eled, sworn, and charged at the term aforesaid,
of the Court aforesaid, on their oath present that
prior to the dates on which the letters were mailed,
as hereinafter alleged in the several counts of this
indictment, A. E. SANDERS, H. D. SANDERS,
GUS B. GREENBAUM, WILLIAM GREEN-
BAUM, and CHARLES GREENBAUM, late of

the City of Phoenix, State of Arizona, in said District and Division, hereinafter called "defendants", whose true and full names are, and the true and full name of each of whom is, other than as herein stated, to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth, from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Oscar Schmidt, Jennie Halpin, G. Pape, Addie Driscoll, Effie A. Curry, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded", which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931.

It was a part of said scheme and artifice that the defendants should and they did, on November 23, 1928, organize and incorporate under the laws of the State of Arizona, a corporation known as "Clarence Saunders Stores, Inc.", with a capitalization of 300,000 shares of common stock of no par value, and 15,000 shares of preferred stock of the par value of \$100.00 per share, for the purpose of engaging in the business of merchandising

by means of numerous "chain" grocery stores in the State of Arizona and other States, using the name "Clarence Saunders Stores, Inc." [4]

It was a further part of said scheme and artifice that the defendants should and they did change the name of said Clarence Saunders Stores, Inc., successively to Arizona Clarence Saunders Stores, Inc., United Clarence Saunders Stores, Inc., and to United Sanders Stores, Inc., which said corporations were at all times dominated and controlled by said defendants.

It was further a part of said scheme and artifice that the said defendant A. E. Sanders should and he did transfer to said Clarence Saunders Stores, Inc., a certain Franchise Agreement by and between himself and the "Clarence Saunders Corporation", which said Franchise Agreement provided that the said A. E. Sanders would pay one-half of one percent of the gross sales in all stores operated by him for the use of the trade name "Clarence Saunders"; and that said defendant should and he did transfer to said Clarence Saunders Stores, Inc., a certain Option Agreement to purchase five Cashway Stores in the City of Tucson, Arizona, in consideration for the issuance to the said defendant A. E. Sanders of 151,000 shares of the common capital stock of said Clarence Saunders Stores, Inc.

It was further a part of said scheme and artifice that the defendants should and they did set up as an asset on the books of said Clarence Saunders

Stores, Inc., the sum of \$151,000.00 for the concession to use the name "Clarence Saunders" in said merchandising business; whereas in truth and in fact, as the defendants then and there well knew and intended, said concession was of little or no value.

It was further a part of said scheme and artifice that the defendants should and they did issue and sell to said defendant A. E. Sanders for the sum of one dollar (\$1.00) 35,000 shares of the common stock of said Clarence Saunders Stores, Inc., and that the defendants sold to the persons to be defrauded more than three-fifths of said 35,000 shares of common stock for the benefit and profit of the said defendants and not for the benefit of said corporation.

It was further a part of said scheme and artifice that the defendants should and they did, under the name of Greenbaum Brothers and the Bond and Mortgage Corporation, sell and offer to sell to the persons to be defrauded the common and preferred stock and debenture bonds of said Clarence Saunders Stores, Inc., and its successors, by means of false and fraudulent statements as to the financial condition of said corporation and its successors.

It was further a part of said scheme and artifice that the defendants should and they did authorize and pay, on June 29, 1929, a semi-annual dividend, on the basis of eight (8) per cent per annum, on

all preferred stock of said Clarence Saunders Stores, Inc., of record as of April 30, 1939; whereas in truth and in fact, as the defendants then and there well knew said corporation had at all times been operating at a financial loss and said dividend was not earned by said corporation but was paid from the capital of said Clarence Saunders Stores, Inc.

It was further a part of said scheme and artifice that the defendant H. D. Sanders and his associates should and did on May 15, 1929, organize and incorporate under the laws of the State of Arizona, the Piggly Wiggly Holding Corporation, the name of which said corporation was changed to the "U-Save Holding Corporation" on February 24, 1930, and which corporation was thereafter engaged in business in the City of Los Angeles, State of California.

It was a further part of said scheme and artifice that the said "U-Save Holding Corporation" should and it did acquire the majority of the common capital stock of the said United Sanders Stores, Inc., (which said corporation was the successor of said Clarence Saunders Stores, Inc.) and proceeded to take charge of the assets of the said United Sanders Stores, Inc., and removed certain merchandise valued at more than \$100,000.00 from the warehouse of said United Sanders Stores, Inc., at Phoenix, Arizona, Tucson, Arizona and Nogales, Arizona, [5] and shipped said merchandise to Los Angeles, California, without rendering just and proper compensation therefor.

It was a further part of said scheme and artifice that the defendants should and they did authorize and pay in the form of a dividend interest at the rate of eight (8) per cent per annum on all the preferred capital stock of record as of December 31, 1929, of said Arizona Clarence Saunders Stores, Inc., together with interest at said rate on all money that had been paid in to said corporation on subscriptions for said preferred stock which had not been fully paid for; whereas in truth and in fact, as the defendants then and there well knew, said corporation had at all times operated at a financial loss and there was a surplus deficit of more than \$144,000.00, and that the dividend or interest was not paid from earnings or surplus of said corporation, but from the capital of said Arizona Clarence Saunders Stores, Inc.

It was further a part of said scheme and artifice and in furtherance thereof, that the defendants, for the purpose of inducing the persons to be defrauded to part with their money and property in the purchase of the common and preferred stock and the debenture bonds of said Clarence Saunders Stores, Inc., and its successors, would and did unlawfully, fraudulently and knowingly and feloniously make false pretenses, representations and promises to the persons to be defrauded, through and by means of conversations, letters, circulars, financial statements, newspapers and advertisements, in substance and effect as follows, to-wit:

1. To the effect that the business of said Clarence Saunders Stores, Inc., was being conducted under the "Guiding hand" of Clarence Saunders; when in truth and in fact, as the defendants then and there well knew, Clarence Saunders had no hand in the management or supervision of the business of said corporation;

2. To the effect that the business of said corporation was being efficiently handled and large and substantial profits were being made; when in truth and in fact, as the defendants then and there well knew, the business of said corporation was not being efficiently handled and large profits were not being made and said corporation was operating at a financial loss;

3. That "We earnestly believe that as time goes by you will find that your investment in Clarence Saunders Stores will be one of the most profitable ever made"; when in truth and in fact, as the defendants then and there well knew, said investments would not be the most profitable ever made, or profitable at all, but the corporation was at all times operating at a loss;

4. That "Our Common stock is now being sold at \$7.50 per share, this raise being justified by the very satisfactory condition of the company, which has really exceeded our expectations"; when in truth and in fact, as the defendants then and there well knew, the raise in the price of said stock was not justified by the very satisfactory condition of

said corporation and said stock was practically worthless;

5. That "Your Arizona Clarence Saunders Stock is not a gambling proposition. It is an investment. Through your preferred stock you are receiving 8% a year on your investment from the proceeds of all the stores and warehouses. I believe that your common stock will eventually surprise you by the large annual income per share you will receive from it over a long period of years."; when in truth and in fact, as the defendants then and there well knew, said stock was a gambling proposition and not a safe investment, the 8% per annum paid on the preferred stock was not paid from the proceeds produced by all the stores and warehouses of said corporation but was paid from capital and there was no probability that the common stock of said corporation would eventually earn a large annual income or any income at all; [6]

6. To the effect that during the ten months, ended November 26, 1929, the stores of said corporation then in operation had made splendid profits; when in truth and in fact, as the defendants then and there well knew, said stores did not make splendid profits during said period or any profits at all, but operated at a loss;

7. That "While this development is going on, residents of Arizona have an opportunity to become part owners of these stores and share in their splendid profits"; when in truth and in fact, as the de-

defendants then and there well knew, the investors in said stock would not share in splendid profits from said stores or any profits at all as said stores were being operated at a loss;

8. That "We want you to know and feel that you are a part of this company and to know that the business is being conducted on the very highest planes and to the interests of its customers and stockholders at all times"; when in truth and in fact, as the defendants then and there well knew, the business was not being conducted on a high plane and in the interest of the stockholders, but was being conducted extravagantly and at a financial loss;

9. That "We expect to open a minimum of ten new stores during the current year (1931), without any increase in our outstanding capital. The Company is in a good financial position, as will be shown by Financial Statement as of December 31, 1930"; when in truth and in fact as the defendants then and there well knew, the corporation could not open ten new stores without additional capital and said corporation was not in a good financial condition, had at all times been operating at a financial loss and was insolvent;

10. That "Exchanging your investment from United Sanders Stores, Inc., to U-Save Holding Corporation, gives you a better investment than you had before, even at the time you made your original purchase. The book value of our Class A.

stock, which we are offering in exchange for your United Sanders Stores, Inc., stock, is \$18.60 per share; this value should increase steadily as we expand through franchising our system and we believe that it is only a question of a few years until its selling value will be ten times what its book value is today"; when in truth and in fact, as the defendants then and there well knew, the actual book value of Class A U-Save Holding Corporation stock was not \$18.60 per share, as said corporation was practically insolvent and was declared a bankrupt within six months thereafter;

11. To the effect that the stock offered for sale had no connection with the name "Sanders" but that it was strictly stock of the Clarence Saunders Co., the originator of the Piggly Wiggly Stores; when in truth and in fact, as the defendants then and there well knew, the stock offered for sale was not that of the Clarence Saunders Corporation but that of a corporation over which Clarence Saunders had no control;

12. To the effect that the Arizona Clarence Saunders Stores, Inc., would guarantee interest on its stock after six months no matter what happened; when in truth and in fact, as the defendants then and there well knew, said company did not intend to guarantee and pay interest on said stock for any definite time;

13. To the effect that the Arizona Clarence Saunders Stores, Inc., was making large profits;

that the common stock would be worth \$25.00 per share within ninety days and that the company had no indebtedness; when in truth and in fact, as the defendants then and there well knew, there was no possibility that the common stock would be worth \$25.00 per share within ninety days or at all, and said corporation was at the time heavily in debt and was not *make* profits; [7]

14. To the effect that the common stock of said corporation would soon go on the market at \$10.00 per share and upwards, and a \$300.00 bonus would be paid on a \$1000.00 Debenture Bond of said corporation at the end of three years; when in truth and in fact, as the defendants then and there well knew; they did not intend to list said stock on the market and did not intend to pay a \$300.00 bonus or any bonus at all on said Debenture Bonds at the end of three years or at any other time.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 9th day of April, 1930, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the post office of the United States there, to be sent and delivered by the Post

Office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States Postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one, Addie Driscoll, Box 103, Douglas, Arizona, the said Addie Driscoll, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“Bond and Mortgage Corporation
Security Building,
Phoenix, Ariz.
April 9, 1930.

Addie Driscoll,
Box 103,
Douglas, Arizona.

Dear Madam:

“Answering your letter of April 8th, we wish to advise that the Common stock of the United Clarence Saunders Stores, Inc. is being offered to the public through this company for \$10.00 per share.

“Trusting that this is the information you desire, we are,

Yours very truly,

BOND AND MORTGAGE CORPORATION,

By: (Signed) M. LOVELAND

ml

Assistant Secretary.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are, and the true and full name of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other [8] persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded", which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 25th day of April, 1930, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the post office of the United States there, to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one, Jennie Halpin, 741 W. Pierce, Phoenix, Arizona, the said Jennie Halpin, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“BOND AND MORTGAGE CORPORATION
Security Building,
Phoenix, Arizona.

April 25, 1930.

Jennie Halpin,
741 W. Pierce,
Phoenix, Arizona.

Dear Madam:

We take pleasure in acknowledging receipt of your order for one \$500.00 First 8% Serial Gold Debenture of the United Clarence Saunders Stores Inc., and 10 shares of Common Stock, together with your North American Company shares, which have been credited to your account and balance refunded to you as per statement delivered to you by our representative, Mr. Norell. The debenture and certificate for common stock will be mailed to you within a short time.

“We congratulate you upon having made this excellent investment. We believe it will prove to be more and more profitable as the years pass and the great chain of self-service grocery stores continues to grow throughout the Southwest.

“Your name is being entered upon the Company’s mailing list today so that you will receive all information and reports relative to its business as they are issued from now on. Please advise us of any change of address.

“We would be glad to receive the names and addresses of any of your friends who you think would be interested in an investment of this high character. Good stockholders strengthen any company. . . Every new stockholder of sound moral and financial standing added to the list of about 1500 now owning United Clarence [9] Saunders stock, surrounds your investment with just that much more solidity; tends to bring the beginning of dividend payments on the Common just that much nearer.

“Use the enclosed form which is sent for your convenience with a self-addressed stamped envelope.

“Hop to have the pleasure of receiving your suggestions at an early date, we are,

Sincerely yours,

BOND AND MORTGAGE CORPORATION

By: (Signed) M. LOVELAND

Assistant Secretary.”

ml

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are,

and the true and full name of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded" which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 31st day of January, 1931, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place

and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one, Oscar Schmidt, Globe, Arizona, the said Oscar Schmidt, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say: [10]

“UNITED SANDERS STORES, INC.,
305 South Second Avenue
Phoenix, Arizona,
January 31st,
1931

Mr. Oscar Schmidt,
Globe, Arizona.

“Replying to your letter of January 8th, in reference to the \$1000 paid on subscription No. 5460.

“This payment was made on a subscription of \$2500 and after crediting interest up to December 31, 1929, amount \$10.64, leaving a balance of \$1489.36.

“As you will readily understand these subscriptions are a bonafide agreement and are not subject

to cancellation. We have paid the selling agents full commission on the subscriptions, and to cancel them would mean a loss either to the Company or to the subscriber. We are not authorized to assume this loss on the part of the Company, and do not wish to ask the subscriber to take the loss. We would suggest that when convenient this balance be paid so that stock for the full amount of the subscription can be issued. It has never been the attitude of the Company to take advantage of the forfeiture clause in these subscriptions, and we are also glad to extend a reasonable length of time in which for them to be paid out. This we will be glad to do in your case.

“Assuring you of our good wishes, and awaiting your further advise in the matter, we are

Very truly yours,

UNITED SANDERS STORES, INC.,

GCP
VS

(Signed) G. C. PARTEE,
Sec. and Tres.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FOURTH COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full

names are, and the true and full name of each of whom is, other than as herein stated to the grand Jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded" which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof. [11]

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 1st day of July, 1930, at Phoenix, Arizona, as aforesaid, in said District of Arizona and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and

artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States Postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one Fred Bliklen, R. R. 1, Box 279, Phoenix, Arizona, the said Fred Bliklen, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“UNITED CLARENCE SAUNDERS
STORES, INC.

305 South Second Avenue
Phoenix, Arizona.

July 1, 1930.

Dear Stockholder:

“We are indeed pleased to report the progress that your Company has made for the first half of the year of 1930. The volume of business has steadily increased, and after analyzing the reason for this increase, we have come to the conclusion that the stockholders’ personal interest in the affairs of the Company has been the moving factor for the splendid showing that has been made.

“We believe by the end of this year, a large portion of the expansion contemplated for Arizona will be completed, as we expect to have stores in practically every city in the state where one can profitably be operated. The growth of a large Company must necessarily be somewhat slow and steady in order to establish a firm foundation at each step, and we believe the officials of your company have acted wisely, in view of prevailing business conditions.

“The writer has had the pleasure of just returning from Memphis, and judging from the volume of business done by other units throughout the country, Arizona is among the real leaders. We are trying to make the Arizona unit the largest in the country, and the only way this can be accomplished is through your cooperation. Boost your Company wherever possible. Do not listen to idle rumors from competitive sources which are detrimental to your Company. Instead of listening, boost your own Company.

“With best wishes, we are

Sincerely yours,

UNITED CLARENCE SAUNDERS
STORES, INC.

Aes:ml By: (Signed) A. E. SANDERS,
President.”

contrary to the form of the statute in such case

made and provided, and against the peace and dignity of the United States of America. [12]

FIFTH COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona whose true and full names are, and the true and full names of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young, and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded" which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid do further present and show that said de-

endants, on the 3rd day of April, 1930, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one Monroe Young, Route 5, Phoenix, Arizona, the said Monroe Young, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“UNITED CLARENCE SAUNDERS

STORES, INC.,

305 South Second Avenue,

Phoenix, Arizona.

April 3, 1930.

From A. E. Sanders, President,

United Clarence Saunders Stores, Inc.

Dear Stockholder:

“We wish to inform you briefly as to what

your Company's plans are for the future, and what its accomplishments have been in the past. It is, as you know, the policy of the Company to keep its stockholders advised at all times as to what is being done.

"In the Wall Street Journal of Thursday morning February 20, 1930, Henry Ford, in a recent interview at Ft. Meyer, Florida, stated: "The price of food is too high. Mass production is the answer to such questions as this. We have therefore, the chain stores, which have developed tremendously." In other words, Henry Ford advocates chain stores. Such comments are made by many of the largest manufacturers and financiers in the country, whose names are too numerous to mention.

"On April 12th, our Prescott store will be opened, which will start the invasion of the northern territory, and some time during April our store in Glendale will be opened. In the other towns of the state where stores are to be opened, we hope to have them [13] operating by the end of 1930. The volume of business at present has been very satisfactory, and we expect that this year will run into several millions of dollars. Opening of the stores will take place as rapidly as is commensurate with sound business principles.

"The solid progress which has been made by your Company since our first store was opened in Tucson about a year ago has been

noteworthy. The chain store grocery business is a logical and sensible development of the problem presented by the necessity for supplying over one hundred and twenty million people in forty-eight states with food, and properly managed is as you know, immensely profitable.

“Recently the State Corporation Commission granted the United Clarence Saunders Stores, Inc., a permit increasing the price of the Common stock to \$10.00 per share, at which price we understand these shares are now being offered by the brokers to the public.

“We wish to impress upon you that the progress of your Company depends upon each and every one of us, so just keep on boosting for Clarence Saunders Stores.

UNITED CLARENCE SAUNDERS
STORES, INC.

eas:ml By: (Signed) A. E. SANDERS

President.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT SIX: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum, and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are,

and the true and full name of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded" which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 9th day of April, 1930, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so have as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully, and feloniously did knowingly place and cause to be placed in the Post office of the United States there,

to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return [14] card, direction and address, to-wit: a letter addressed to one, Pearl Gripp, Box 2360 Bisbee, Arizona, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“BOND AND MORTGAGE CORPORATION
Security Building
Phoenix, Arizona.

TO THE PEOPLE OF ARIZONA:

“What amounts to a business revolution is taking place today among the great systems of chain grocery stores which have been for several years past extending throughout the length and breadth of the United States and Canada.

“A giant figure casts a steadily lengthening shadow over the chain store grocery trade—the figure of the celebrated Clarence Saunders.

“His was the master-mind that revolutionized the retail grocery business of the world by originating the self-service grocery store. He built his idea into Piggly Wiggly—something that in its day was absolutely new in retail history.

“He is now building up *anew* and greater chain of money-making self-service stores. His new stores are as much of an improvement over the original self-service grocery chain as they in their time had been over the old-fashioned topsy-turvy cross-roads grocery store with haphazard business methods and shelves on which half the time nobody knew where anything was.

“The story of Clarence Saunders is one of the most fascinating in the whole glamorous history of American business. What John Jacob Astor was to the fur trade; what James J. Hill was to the upbuilding of the Northwest; what Huntington was to California and the Southwest; what Marshal Field was to department store merchandising; what Robert Dollar is to American shipping on the Pacific Ocean, Clarence Saunders is to the chain store grocery business.

“During the year just passed, a new and brilliant *chapter* in the story of Clarence Saunders has been written right *herein* our own State—Arizona. Stores have been opened up rapidly. Negotiations are in progress to have one in every community in the State where one can be profitably operated.

“While this development is going on, residents of Arizona have an opportunity to become *past* owners of these stores and share in their splendid profits.

“We will be glad to send you full details, without obligation or cost to you, upon return

of the enclosed card. It requires no stamp. Just write your name and address on it and drop it in the nearest mailbox.

Sincerely yours

BOND AND MORTGAGE CORPORATION”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [15]

SEVENTH COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are, and the true and full name of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. *Ginvenheimer*, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. *Robers* and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called “the persons to be

defrauded” which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof;

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 26th day of March, 1930, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States, there, to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one Mrs. Effie A. Curry, 316 W. Phoenix Avenue, Flagstaff, Arizona, the said Mrs. Effie A. Curry, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following, tenor, that is to say:

“BOND AND MORTGAGE CORPORATION
Security Building,
Phoenix, Arizona.

March 26, 1930.

Mrs. Effie A Curry,
316 W. Phoenix,
Flagstaff, Arizona.

Dear Mrs. Curry:

“We take pleasure in acknowledging receipt of your subscription for 100 shares of Common stock of the United Clarence Saunders Stores, Inc., together with your payment of \$300.00, balance of \$450.00 to be paid at the rate of \$45.00 per month for 10 months excluding June, July and August. Upon completion of payments certificates will be issued in your name and forwarded promptly by Registered Mail.

“We congratulate you upon having made this excellent investment. We believe it will prove to be more and more profitable as the years pass and the great chain of self-service grocery stores continues to grow throughout the Southwest.

“Your name is being entered upon the Company’s mailing list today so that you will receive all information and reports relative to its business as they are issued from now on. Please keep us advised of any change of address. [16]

“We would be glad to receive the names and addresses of any of your friends who you think

would be interested in an investment of this high character. Good stockholders strengthen any company. Every new stockholder of sound moral and financial standing added to the list of about 1500 now owning United Clarence Saunders stock, surrounds your investment with just that much more solidity; tends to bring the beginning of dividend payments on the Common just that much nearer.

“Use the enclosed form which is sent for your convenience with a self-addressed stamped envelope.

“Hoping to have the pleasure of receiving your suggestions at an early date, we are,

Sincerely yours,

BOND AND MORTGAGE CORPORATION

By (Signed) M. LOVELAND

ML:EF

Assistant Secretary.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT EIGHT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are, and the true and full name of each of whom is, other than as herein stated to the grand jurors un-

known, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein all of which persons are hereinafter called "the persons to be defrauded" which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 22nd day of July, 1930, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the person to

whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one, Catherine Ryan, 218 N. Marina Street, Prescott, Arizona, the said Catherine Ryan, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say: [17]

“BOND AND MORTGAGE CORPORATION

Security Building,

Phoenix, Arizona.

July 22, 1930.

Catherine Ryan
218 N. Marina Street,
Prescott, Arizona.

Dear Madam:

“We are certainly pleased to enclose herewith stock certificate #1893 in the United Clarence Saunders Stores, Inc.

“We earnestly believe that as time goes by you will find that your investment in United Clarence Saunders Stores, Inc. will be one of the most profitable ever made. The stores were created by a genius in this particular line of merchandising. Clarence Saunders through his wonderful merchandising methods established

the Piggly Wiggly Stores and when retired had built a business in a few years that was prosperous and known all over the world, and his new stores are just as much advanced in modern merchandising as his old stores were over the old style grocery. With Clarence Saunders' guiding hand over the different stores to be established under his name, we can only say one thing and that is within a few years you will find Clarence Saunders Stores the outstanding food distribution stores in the world.

“Thanking you for the business which has culminated in the delivery of the enclosed certificate, and trusting that you will take further advantage of our facilities for investment counsel and service as you may from time to time require them, we are

Sincerely yours,

BOND & MORTGAGE CORPORATION

ml; ef By: (Signed) M. LOVELAND, (e. f.)”

Assistant Secretary.

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT NINE: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix,

State and District of Arizona, whose true and full names are, and the true and full name of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young, and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded", which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof. [18]

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 9th day of May, 1930, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of

executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the persons to whom the same was then and there directed, a certain letter, to-wit: a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, direction and address to-wit: a letter addressed to one, Mrs. J. O. Parsons, Flagstaff, Arizona, the said Mrs. J. O. Parsons, to whom said letter was so directed was then and there one of the persons to be defrauded as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“BOND AND MORTGAGE CORPORATION

Security Building,

Phoenix, Arizona.

May 9, 1930.

Mrs. J. O. Parsons,

Flagstaff, Arizona.

Dear Mrs. Parsons;

“We are handing the United Clarence Saunders Stores Inc. a check for the balance of your account due them, in the amount of \$1312.19 and they will send certificates out at once. We are crediting your account for your Bldg. and Loan with \$1450.00 and also your check for \$175.00, totaling \$1625.00. The difference between the \$1312.19 that we are pay-

ing the United Clarence Saunders Stores Inc. and the total credit of \$1625.00, or \$312.81, we are crediting on the subscription you have given our Mr. A. C. Collins for \$700.00 worth of 8% debentures; the balance of \$387.19 to be paid in equal monthly payments at the rate of \$38.71 per month.

“If we realize a greater amount for this Bldg. & Loan, we will credit your account with this and notify you of same.

“We thank you for this business and wish to assure you that we are at your service at any time.

Yours very truly,

BOND AND MORTGAGE CORPORATION,
ml By (Signed) M. LOVELAND
Assistant Secretary.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT TEN: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are, and the true and full name of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a *cheme*

and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman [19] Willard Biggs, E. T. *Bingeheimer*, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded" which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 19th day of February, 1931, at Los Angeles, California, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the per-

son to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one, W. H. Forman, Phoenix, Arizona, the said W. H. Forman, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“U-SAVE HOLDING CORPORATION
Central Manufacturing District
4726 Everett Court,
Los Angeles, California.

February 19, 1931.

W. H. Forman,
Phoenix, Arizona.

Dear Mr. Forman:

“United Sanders Stores, Inc., is only valuable as an operating company, and it must be operated economically, its reserves built up and some of its intangibles charged off before it can become profitable. You can readily realize that this can only be done with strong economical management, and even then it will take time, due to the unfavorable general conditions now existing throughout the country.

“U-Save Holding Corporation has a comparatively small amount of stock outstanding. Ex-

changing your investment from United Sanders Stores, Inc. to U-Save Holding Corporation, gives you a better investment than you had before, even than at the time you made your original purchase. The book value of our Class A. Stock, which we are offering in exchange for your United Sanders Stores, Inc. stock, is \$18.60 per share; this value should increase steadily as we expand through franchising our system and we believe that it is only a question of a few years until its selling value will be ten times what its book value is today.

“We are writing to you as one of the largest stockholders, knowing that you will give the matter due consideration as you want to protect and improve your investment, and believe that you will agree with us that the value of exchange is more than fair; also, that you will appreciate the fact that through consolidation economies can be put into effect that could not be done otherwise. This is the most logical plan to preserve and increase the value of your original investment. [20]

“For the benefit of yourself and other stockholders we would appreciate an acceptance or refusal by February 25th.

Very truly yours,

(Signed) H. D. SANDERS,

President”

which said statements made by the defendants in said letter, as aforesaid, were false and untrue, and

the said defendants knew the same were false and untrue at the time they made the same, contrary to the form of the statute in each case made and provided, and against the peace and dignity of the United States of America.

COUNT ELEVEN: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are, and the true and full name of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman. Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded" which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the

first count of this indictment, which said allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 25th day of January, 1931, at Los Angeles, California, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States Postage in the sum of two cents and the following return *catd*, direction and address, to-wit: a letter addressed to one, Willard Biggs, Box 174, Silverbell, Arizona, the said Willard Biggs, to whom said letter was so directed was then and there one of *ther* persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“U-SAVE HOLDING CORPORATION
Central Manufacturing district,
4726 Everett Court,
Los Angeles, California.

January 25, 1931.

TO STOCKHOLDERS

UNITED SANDERS STORES, INC.

“U-Save Holding Corporation has been requested by many of the large stockholders of the United Sanders Stores, Inc. of Arizona to work out some basis for a merger of that Company with U-Save Holding Corporation, that would provide them an opportunity to exchange their stock for stock in U-Save Holding Corporation.

“U-Save Holding Corporation has recently acquired ownership of a majority of common stock in United Sanders [21] Stores, Inc. and is directing the operations of that Company in close affiliation with its own system of U-Save Stores. This working arrangement will ultimately prove of great advantage to the stockholders of United Sanders Stores, Inc., for it will materially reduce that Company’s cost of management, add to buying power, and permit their stores to share in the economies of U-Save System of operation.

“U-Save Holding Corporation wishes to state frankly that it has assumed this management principally from its desire to be of service in safeguarding the investment of itself and all

other stockholders of United Sanders Stores, Inc. An examination of the assets, condition and prospects of both Corporations will disclose to anyone that the benefits of this arrangement will flow principally to the stockholders of United Sanders Stores, Inc. In view of the conditions as disclosed in your Company's annual report to its stockholders, it is apparent, that even with the benefits of the present arrangement, it will be several years before any return can be made upon the capitalization now outstanding.

“We think it hardly open to question but that an absolute merger of the assets of the two Corporations and an exchange of stock for stock in U-Save Holding Corporation upon a basis of actual value would not only present a more sound and economical opportunity for U-Save Holding Corporation to work out and conserve the great potential value that this fine group of stores contains, but it would be of immense ultimate advantage to the stockholders of the United Sanders Stores Inc. who exchanged their stock. They would not only strengthen their own investment, but they would share in all the earnings of the entire U-Save System.

“U-Save System Stores are now safely launched on their way to nation-wide development. The bulk of this expansion will occur

from the sale of Franchise rights fo use of U-Save name and fixtures for groups of U-Save Stores throughout the nation. The earnings accruing to U-Save Holding Corporation from Franchise sales and Royalties from Franchised U-Save Stores will all belong to holders of U-Save Holding Corporation Common stock, and the result in dividends out of all proper-tion to its original cost. Therein lies the oppor-tunity for stockholders of United Sanders Stores, Inc., who exchange their stock to more than recover their original investment and still retain the principal.

“U-Save Holding Corporation has no desire to change the set up of United Sanders Stores, Inc. or undertake the solution of its affairs, except it be upon the request of that organi-zation and all of its stockholders; and not even then except upon an equitable exchange of stock based upon present actual value. We are sin-cere in our desire to be of service to the in-vestors in United Sanders Stores, Inc., and are willing to go to the limit of fairness to the stockholders of U-Save Holding Corporation.

“In view of the above we have had a C.P.A. audit of both companies and on this basis and subject to the approval of the Corporation Com-mission and the acceptance of the stockholders of United Sanders Stores Inc., we offer to ex-change:

“4 shares U-Save Class A for 1 share
United Sanders Stores Inc. Preferred

“1 share U-Save Class A for 10 shares
United Sanders Stores Inc. common. [22]

“We believe that an exchange on this basis will be greatly to the advantage of every stockholder of United Sanders Stores, Inc., and will result in an ultimate profit *forar* in excess of what they could otherwise realize. You will also realize that this proposition is based on conditions as they exist now, and could not be made by us except for immediate acceptance within a limited time, and conditioned upon the deposit of practically all of the stock of United Sanders Stores Inc., with the secretary of your own Company at Phoenix, Arizona, properly endorsed for exchange upon basis, by February 25, 1931.

“Should you desire to accept this *offer*, please endorse your certificates and send at once to your secretary together with signed instructions in line with form enclosed. In the event that practically all stock has not been deposited for exchange by February 25, 1931, the present offer will expire, and your stock will be returned.

“A form of instructions is enclosed, and your secretary will forward you a receipt for your stock and be guided by your instructions. We leave the decision entirely with you. We are

confident you will agree that a time limit is necessarily a part of the offer.

“If this exchange is consummated, the result would be that United Sanders Stores, Piggly Wiggly Southwestern, Piggly Wiggly Yuma Company and U-Save Stores would operate as one company and each and every stockholder would participate in the earnings of the combined organization, its patents, copy rights, and Franchise values, as well as store operations.

Yours truly,

U-SAVE HOLDING CORPORATION

H. D. SANDERS,

President.”

which said statements made by the defendants, in said letter, as aforesaid were false and untrue, and the said defendants knew same were false and untrue at the time they made the same; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT TWELVE: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are, and the true and full name of each of whom is, other than as herein stated to the grand

jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded" which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 10th day of January, 1931, at Phoenix, Arizona, aforesaid, in said District [23] Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered

by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one, E. T. Bingenheimer, the said E. T. Bingenheimer, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“UNITED SANDERS STORES, INC.

Phoenix, Arizona,

January 10, 1931.

TO THE STOCKHOLDERS OF
UNITED SANDERS STORES, INC.

“United Clarence Saunders Stores, Inc. was incorporated under the laws of the State of Arizona, October 25, 1928.

“The foundation on which your company was formed and started to build was a concession from the Clarence Saunders Corporation, covering the states of Arizona and New Mexico. The original organizers of your company had an ambitious and practical plan for the development of stores throughout the states covered by their concession. The first store was opened in January 1929. The company made exceed-

ingly rapid progress during the year 1929 and enjoyed the full confidence of the trade.

“During the fall of 1929 your company contracted for merchandise not only for the stores it was then operating, but in anticipation of the stores covered by their expansion program. This merchandise was contracted for delivery as required up to May 1930. A general business depression had meanwhile settled over the entire nation, merchandise values declined and your company took a market loss on the merchandise it had in the stores also on the merchandise contracted in anticipation of new stores. This merchandise loss was exceedingly heavy.

“Plans had been completed for the development of stores in New Mexico, as well as additional stores in Arizona during 1930, and considerable money had been spent in preparation for this expansion. Early in the year 1930, the Clarence Saunders Stores, Inc. of Memphis, Tenn., a chain organized and then controlled by Clarence Saunders, and, operating under a like concession from the Clarence Saunders Corporation, became involved in financial difficulties and were placed in the hands of a Receiver.

“While neither the Clarence Saunders Stores Company, Inc., nor the Clarence Saunders Corporation had any financial interest in the United Clarence Saunders Stores Inc. of Ari-

zona, (except the receipt of royalties under the Concession) nevertheless this failure affected the credit and confidence of the trade in all units operating under concession from Clarence Saunders Corporation. This loss of confidence and credit so affected your company's business that it became necessary to change its entire set-up and abandon its expansion program. The result was a heavy loss to your Company, due to conditions over which it had no control. [24]

“On November 1, 1930, at a general stockholders meeting the name of the company was changed to the United Sanders Stores, Inc.

“In October 1930 the U-Save Holding Corporation purchased the control of the common stock of the United Sanders Stores, Inc., and since that time have been active in the management of its affairs. Under this new management expenses have been cut approximately \$50,000.00 per annum.

“An audit of the books showed that the warehouses were operating at a very heavy loss and it was costing better than 7% to serve the stores through its own warehouses, so the U-Save Holding Corporation purchased the warehouses stocks at actual inventory, and entered into an agreement to serve the United Sanders Stores at cost plus 5%. This mark-up hardly covered the cost of handling the merchandise and is without profit to U-Save

Holding Corporation. The warehouse stocks inventoried approximately \$110,000.00, and U-Save Holding Corporation gave the Sanders Stores \$69,100.00 in Preferred Stock and paid off approximately \$40,000.00 of their current indebtedness; in addition to this extended them a line of credit for merchandise, which at the close of the year amounted to \$33,842.72. It was a very advantageous arrangement for the stockholders of the United Sanders Stores, as that company received its dividends from the stock it held, its stores were served cheaper than before, and they received cash to pay off the major portion of their current indebtedness.

“The Company is now in a good financial position relative to Assets and Liabilities. However, the Company must be operated and expanded economically and its reserves built up before it can pay dividends upon its present capitalization. This can only be done with the co-operation and support of all stockholders.

“A copy of this report with financial statement, prepared by A. E. Skeats, Certified Public Accountant, is being mailed to each stockholder.

Respectfully submitted,

G. C. PARTEE,

Secretary.”

which said statements made by the defendants, in said letter, as aforesaid, were false and untrue, and the said defendants knew same were false and untrue at the time they made the same; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT THIRTEEN: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are, and the true and full name of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons, are hereinafter called "the persons to be defrauded" which said scheme and artifice was in existence and continued in effect to and including

the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof [25]

And the Grand Jurors aforesaid, upon their oath aforesaid do further present and show that said defendants, on the 6th day of October, 1930, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit: a letter then and there enclosed in an envelope then and there bearing United States Postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one, G. Pape, 220 W. Van Buren, Phoenix, Arizona, the said G. Pape, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“UNITED CLARENCE SAUNDERS
STORES, INC.

305 South Second Avenue,
Phoenix, Arizona.

October 6, 1930.

NOTICE TO STOCKHOLDERS.

“No doubt you have received a notice of a special meeting called for the latter part of this month. This meeting is of utmost importance to every investing stockholder of the United Clarence Saunders Stores, Inc., and we would certainly like for every one that possibly can to attend this meeting. If not to send in their proxy but we prefer to see them in person.

“The primary purpose for which this meeting is being called is to change the name of the company from United Clarence Saunders Stores, Inc., to The United Sanders Stores, Inc., of Arizona and to further change the plans of the company in respect to operation and management of the additional stores it proposes to establish in this state.

“Under the original plan you were identified with the Clarence Saunders Corporation under a franchise agreement. We are paying one-half of one per cent of our gross sales for this privilege, which amounts to approximately \$10,000.00 a year at the present time. The officers of your company have felt for some time that

it would be good business for the company to be able to operate as an independent corporate unit, entirely removed from any affiliations with the Clarence Saunders System.

“Stores would be operated under the trade name of Sanders U-Save System and due to the unfavorable publicity which has been attached to Mr. Clarence Saunders’ name in connection with recent business reverses, the name of Clarence Saunders might prove to be more of a liability than an asset to your company. Under the proposed change your company would function as a state unit of The Sanders Stores of America, the corporation to be formed and to control forty-two stores and five warehouses already established and doing business in Arizona and California, known as:

“United Clarence Saunders Stores, Inc.
Piggly-Wiggly Southwestern Company
Piggly-Wiggly Yuma Company
U-Save Holding Corporation

“These stores and warehouses are now doing a volume of business of over \$3,000,000.00 annually and have assets totaling approximately \$2,800,000.00. [26]

“At this meeting the above plan and change of operating the stores of this company will be discussed and explained in detail and action will be taken in respect to a change of such plans and the officers of the company author-

ized to enter into all necessary contracts carrying out such changed plans, if the same meets with the approval of the stockholders at this meeting. At the present time your company is planning its initial Sanders U-Save store in Tucson and the officers are exceeding desirous of having all necessary preliminary arrangements in connection with any change of plans disposed of in advance of the time this store is opened in order that no delay will occur in establishing other stores in the State of Arizona. Control of the Arizona unit has passed to H. D. Sanders, who, in turn, will pass his control over to The Sanders Stores of America, the Holding Company to be formed.

“H. D. Sanders has had a very wonderful career in western merchandising, was a merchandise broker at El Paso, Texas, organized the Texas Produce Company at El Paso, Texas; was also connected with the American Wholesale Grocery Company at El Paso, Texas. Later he entered the retail field, opening the Piggly-Wiggly at Nogales, Arizona; from there he branched out over into the Yuma and California territory, where he purchased the Piggly-Wiggly Imperial Company, which was absorbed into his U-Save Holding Corporation. The fixtures which he invented are considered the most logical form of retail merchandising and will save the company thousands of dollars by installing the same equipment in our present stores.

“He is a merchandising genius which has seldom been equaled and we know that you could not find a better man to be in charge of this unit.

“Associated with H. D. Sanders will be K. C. Van Atta, born in New York City, his first business training with the Chase National Bank of that city; later connected with the Murray-Lane Wholesale Grocery Company operating wholesale and retail groceries throughout New Mexico and eastern Arizona. For the past five years he was connected with the California Packing Corporation, packers of Del Monte food products, whom he left recently to become connected with this company.

“A. M. Kaler, buyer, has a record that is unequalled in the United States. He has spent the past 24 years directly connected with the food industry; 16 years with Armour and Company and in 1922 he joined the Piggly-Wiggly System, with headquarters at Los Angeles. He took an active part in building up this unit from 16 stores to 200 stores, located in Los Angeles, California and vicinity, Salt Lake City and Ogden, Utah, and Cleveland, Ohio. After leaving this wonderful successful unit, which was purchased by the Safeway Company, he joined the Sun Maid Raisin Growers of Fresno, California, and traveled extensively over the United States, contacting chain stores and other large business. Both his extensive

general experience, as well as the knowledge of advanced chain store methods will be of tremendous value to this company and you are indeed fortunate to secure such an outstanding authority as our Purchasing Agent and Merchandising Manager. [27]

“Warfield Ryley, General Manager; Mr. Ryley is a true descendant from a family of groccerymen. His father before him was in the general mercantile business. Mr. Ryley was born in Kansas City, Missouri, 55 years ago, attended their city schools and both John Hopkins and Yale Universities. For a number of years he was connected with Ridenour Baker Company of Kansas City, Missouri, one of the largest wholesale groccers of the United States. He later entered the general merchandise broker business in Arizona. Mr. Ryley is considered not only a gentleman of the highest integrity but an outstanding merchandise genius.

“Cy Measday, who will be Manger of the Tucson division, practically built up your Piggly-Wiggly stores in Tucson and Phoenix. Graduated from the University of Arizona. From a small capital invested in these stores he made a wonderful cuccess and earned the stockholders and owners an enormous profit. Recently these stores were sold out to the McMarr Stores and through this consolidation you were furtunate to secure the wonderful service of Mr. Measday.

“J. S. Mackin: Mr. Mackin, who will be connected with this organization in the capacity of General Manager of Retail Stores, is a merchant with a long record of store management. He is eminently qualified to keep the Sanders U-Save Stores where they are—always one step ahead of the procession.

“He was formerly manager of the Trinity Grocery Company, wholesale grocers at Dallas, Texas; Manager of the American Wholesale Grocery Company, El Paso, Texas; Manager of the Star Cash Grocery, Houston and Dallas, Texas—a chain of 120 retail stores.

“With his knowledge of merchandising methods and chain store management he is invaluable to this organization.

“A. E. Sanders will still be connected with the company and on the Board of Directors, but will be entirely in the Financial Department, associated with Mr. C. L. Patterson, who is the “Banker who turned Grocer”. Mr. Patterson came to the U-Save System soon after it organized. Prior to then he had been Vice President and Manager of the First National Bank of Yuma and Yuma National Bank for eight years. In 1926 he organized and became President of the Yuma Trust and Holding Company, leaving that company in February, 1930, to join the U-Save Holding Corporation.

“Mr. Patterson brings to Sanders U-Save System a recognized ability in corporate or-

ganization and finance, having wide acquaintance in southwestern banking circles and a knowledge of legal financial questions gained from long experience in the banking field. The opportunities which the U-Save System presents attracted him to this organization.

“We do not think that there is a chain store organization in the United States with a personnel as capable as the above referred to. Under the old arrangement in single state organizations it was impossible to secure a large group of outstanding men of this caliber on their directorate. [28]

“Mr. A. E. Sanders, the President of this Company, has accomplished something in Arizona, which, we do not think has been equalled. The First Arizona unit was opened June 26, 1929, and in this short term has established 24 stores, doing a business of over \$2,000,000.00 per annum and we think they are the best group of stores in the United States. As you all know it costs a considerable amount of money to *pen* and develop stores as rapidly as these and in order to protect all interests and make it the outstanding chain of stores in America we decided to make this change in our general plan. Furthermore under this new change in plan the Sanders Stores of America will guarantee the payment of all interests and principal on debentures and the interest on the pre-

ferred stock, outstanding of the Arizona company.

“They will also establish a Re-sales Department, to handled the resale of securities and under this new plan and set-up we have no doubt but what it will create an active market for your securities as well as show you wonderful returns for we firmly believe that your original investment in the United Clarence Saunders Stores, Inc., is going to be one of the most profitable and pleasant that you have ever made.

“Sincerely yours,

UNITED CLARENCE SAUNDERS
STORES, INC.,

GCP:MD

By: G. C. PARTEE,
Secretary.”

which said ststements made by the defendants, in said letter, as aforesaid, were false and untrue, and the said defendants knew same were false and untrue at the time they made the same; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT FOURTEEN: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix,

State and District of Arizona, whose true and full names are, and the true and full names of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded", which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 16th day of September, 1930, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and

artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States, there, to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, [29] direction and address, to-wit: a letter addressed to one, Pearl Gripp, Box 236, Bisbee, Arizona, the said Pearl Gripp, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“UNITED CLARENCE SAUNDERS
STORES, INC.

305 South Second Avenue,
Phoenix, Arizona.

Sept. 16, 1930.

Pearl Gripp
Bisbee, Arizona
Box 236.

Dear Stockholder.

“We are certainly pleased to enclose here-
with your stock certificates for five shares of
Preferred and Twenty-five shares of Common
Stock in the United Clarence Saunders Stores,
Incorporated.

“We earnestly believe that as time goes by you will find that your investment in Clarence Saunders Stores will be one of the most profitable ever made. The stores were created by a genius in this particular line of merchandising. Clarence Saunders, through his wonderful merchandising methods, established the Piggly-Wiggly Stores and when forced out had, in a few years, built a business that was prosperous and known all over the worlds, and his new stores are just as much advanced in modern merchandising as his old stores were over the old style grocery. With Clarence Saunders’ guiding hand over the different stores to be established under his name we can see only one thing and that is—within a few years you will find Clarence Saunders Stores the outstanding food distribution stores in the world.

““We want you to know and feel that you are a part of this company and to know that the business is being conducted on the very highest planes and to the interest of its customers and stockholders at all times.

“With very best wishes, we are

“Yours very truly,

UNITED CLARENCE SAUNDERS
STORES, INC.

By: (Signed) G. C. PARTEE,

ses:md

Secretary.”

which said statements made by the defendants, in said letter, as aforesaid, were false and untrue, and the said defendants knew same were false and untrue at the time they made the same; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT FIFTEEN: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are, and the true and full names of each of whom is, other than herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public [30] generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which said persons are hereinafter called "the persons to be defrauded", which said scheme and artifice was in existence and continued in effect

to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 12th day of August, 1930, at Phoenix, Arizona, aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States Postage in the sum of two cents and the following return card, direction and address, to-wit, a letter addressed to one, John Muldoon, Seligman, Arizona, the said John Muldoon, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

BOND AND MORTGAGE CORPORATION
Security Building,
Phoenix, Arizona.

August 12, 1930.

Mr. John Muldoon,
Seligman, Arizona.

Dear Mr. Muldoon:

“We are very glad to enclose herewith Certificate No. 1978 for 400 shares of Common stock of the United Clarence Saunders Stores, Inc.

““We earnestly believe that as time goes by you will find that your investment in United Clarence Saunders Stores Inc. will be one of the most profitable ever made.

“Again thanking you for the business you have done through this office, we are,

“Sincerely yours,

BOND AND MORTGAGE CORPORATION.

By: (Signed) M. LOVELAND

ml

Assistant Secretary.”

which said statements made by the defendants, in said letter, as aforesaid, were false and untrue, and the said defendants knew same were false and untrue at the time they made the same; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT SIXTEEN: And the Grand Jurors aforesaid, upon their oaths aforesaid do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are, and the true and full name of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Fliklen, John Muldoon, Mrs. J. O. Parsons, [31] E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded", which said scheme and artifice was in existence and continued in effect to and including the nineteenth day of March, 1931, more particularly set forth in the first count of this indictment, which said allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 29th day of August, 1929, at

Phoenix, Arizona, as aforesaid, in said District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the person to whom the same was then and there directed, a certain letter, to-wit, a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one, Oliver Fry, Garden, Canyon Arizona, the said Oliver Fry, to whom said letter was so directed was then and there one of the persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

ARIZONA CLARENCE SAUNDERS
STORES, INC.,

700-701 Security Building.

Phoenix, Arizona.

August 29, 1929.

Dear Stockholder:

“It being the policy of this Company to keep its stockholders informed of the progress it is making, we are pleased to submit herewith information of interest.

“Stores No. 11-12-13-14-15-16 and 17 are

rapidly nearing completion. Number 11 will be opened Saturday, August 31st and Number 12 will open September 7th. Number 13 will open Friday, September 13th, which shows we are not the least bit superstitious, and the others numbered above will open at frequent intervals, just as soon as they can be rushed to completion. This policy will be followed until a Clarence Saunders Store is in operation in every town in the State where it appears profitable.

“We are more than gratified with the reception the public has given Clarence Saunders Stores. This is evidenced by the fact that more than eleven hundred people have purchased our securities, each one of them a satisfied purchaser and each of them contributing materially to the volume of business our stores are doing.

“Our Common stock is now being sold at \$7.50 per share, this raise being justified by the very satisfactory condition of the Company, which has really exceeded our expectations.
[32]

“We will continue these letters regularly as conditions warrant and we expect soon to make an announcement of prime importance to you.

“Respectfully yours,

ARIZONA CLARENCE SAUNDERS
STORES, INC.

By: (Signed) A. E. SANDERS

President.”

which said statements made by the defendants, in said letter, as aforesaid, were false and untrue, and the said defendants knew same were false and untrue at the time they made the same; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT SEVENTEEN: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and show that A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, William Greenbaum and Charles Greenbaum, late of the City of Phoenix, State and District of Arizona, whose true and full names are, and the true and full name of each of whom is, other than as herein stated to the grand jurors unknown, did devise and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as hereinafter set forth from W. H. Forman, Willard Biggs, E. T. Bingenheimer, Pearl Gripp, Fred Bliklen, John Muldoon, Mrs. J. O. Parsons, E. L. and Mrs. R. V. Roberts and Monroe Young and from a large number of other persons, including the public generally, whose names because of their great number and the want of information on the part of the grand jurors are not given herein, all of which persons are hereinafter called "the persons to be defrauded" which said scheme and artifice was in existence and continued in effect to and including the nineteenth day

of March, 1931, more particularly set forth in the first count of this indictment, which allegations are by reference made a part hereof.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and show that said defendants, on the 21st day of July, 1930, at Phoenix, Arizona, aforesaid, in the District of Arizona, and within the jurisdiction of the United States and this Honorable Court, so having as aforesaid, devised the scheme and artifice, aforesaid, for the purpose and with the intent then and there on their part of executing said scheme and artifice, unlawfully and feloniously did knowingly place and cause to be placed in the Post Office of the United States there, to be sent and delivered by the post office establishment of the United States to the persons to whom the same was then and there directed, a certain letter, to wit? a letter then and there enclosed in an envelope then and there bearing United States postage in the sum of two cents and the following return card, direction and address, to-wit: a letter addressed to one, E. L. and Mrs. R. V. Roberts, Box 323, Ajo, Arizona, the said E. L. and Mrs. R. V. Roberts, to whom said letter was so directed was then and there persons to be defrauded, as said defendants then and there well knew, and which said letter was and is of the following tenor, that is to say:

“UNITED CLARENCE SAUNDERS
STORES, INC.

305 South Second Avenue,
Phoenix, Arizona.

July 21, 1930.

Dear Stockholder:

“First, we wish to thank each and every one of you stockholders for the letters we have received from you expressing your wonderful confidence in the officials of your Company. Each day brings fresh letters, and this splendid cooperation is indeed gratifying to the officials of your company. [33]

“Naturally, as stockholders of the United Clarence Saunders Stores, Inc., you are doubtless pleased with the progress your Company has made. On January 26, 1929, our first store was opened, and since then eighteen additional stores have been opened, making a total of nineteen in the State. Saturday, July 26, another one of your Clarence Saunders stores will be opened in Tucson. Before the year of 1930 is over we certainly expect to have a great many stores scattered throughout the different points in the State where one can be profitably operated.

“It is very gratifying the way the public in general in the State of Arizona has acclaimed the Clarence Saunders Stores. Our volume of business is beyond any figure that we had anticipated, with each month showing a substan-

tial increase. You, no doubt, are aware that the Clarence Saunders stores in Arizona are home owned, home operated, and operated by Arizona Capital. We are proud to say that practically all the employees of your company here are Arizona people, and this policy to employ Arizona people has been maintained since the inception of our first store, and uppermost in our minds is the thought to GROW WITH ARIZONA.

“Bear in mind that you are a part of your Company and your cooperation is necessary at all times to make this Company a success. Idle rumors are afloat that have no foundation. If at any time, there is any doubt in your mind as to your Company, make your inquiry direct to the officials of your Company, who will at all times be glad to give you any information that you desire.

“Yours for success,

“UNITED CLARENCE SAUNDERS,
STORES, INC.

(Signed) K. L. VANATTA

aes;ml

Vice President.”

which said statements made by the defendants, in said letter, as aforesaid, were false and untrue, and the said defendants knew same were false and untrue at the time they made the same; contrary to the form of the statute in such case made and pro-

vided, and against the peace and dignity of the United States of America.

JOHN C. GUNG'L

United States Attorney

J. S. WHEELER

Assistant U. S. Attorney [34]

No. -----

UNITED STATES DISTRICT COURT

District of Arizona

-----Division

The United States of America

vs.

A. E. Sanders et al

INDICTMENT.

A true bill,

H. A. CLARK

Foreman.

Filed in open Court this-----

day of -----A. D. 19

Clerk.

Bail, \$-----

Witnesses

W. G. Means

Addie Driscoll

Mrs. Jennie Halpan

Fred Bliklen

Oliver Fry

Walter A Wood

J. M. Nixon

[Endorsed]: Filed FEB 28 1933 [35]

Minute Entry of

TUESDAY, FEBRUARY 28, 1933

November 1932 Term

At Tucson

HONORABLE ALBERT M. SAMES, United
States District Judge, presiding.

[Title of Cause.]

On motion of John C. Gung'l, Esquire, United
States Attorney,

IT IS ORDERED that a Bench Warrant issue
forthwith for the apprehension of each of the de-
fendants herein and that the bond of each of said
defendants be fixed in the penal sum of Twenty
Five Thousand Dollars (\$25,000.00). [36]

 Minute Entry of

THURSDAY, MARCH 2, 1933

October 1932 Term

At Phoenix

HONORABLE F. C. JACOBS, United States Dis-
trict Judge, presiding.

[Title of Cause.]

Upon motion of Louise B. Whitney, Esquire, and
with the consent of J. S. Wheeler, Esquire, Assist-
ant United States Attorney,

IT IS ORDERED that the bond of each defend-
ant herein, be reduced to the penal sum of Ten
Thousand Dollars (\$10,000.00) [37]

Minute Entry of

MONDAY, MARCH 6, 1933

October 1932 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, presiding.

[Title of Cause.]

The defendants, Gus Greenbaum, Charles Greenbaum, and William Greenbaum, are present in person, with their counsel, A. B. Baker, Esquire. The defendant, A. E. Sanders, is present in person, with A. B. Baker, Esquire, who appears specially for said defendant.

The defendants are now duly arraigned; the Indictment is read to them and a copy thereof handed to each of said defendants. Each of said defendants pleads Not Guilty, with the privilege of withdrawing said pleas for the purpose of filing Demurrer, and

IT IS ORDERED that this case be continued to be set for trial. [38]

Minute Entry of

WEDNESDAY, OCTOBER 4, 1933

October 1933 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, presiding.

[Title of Cause.]

This being the time heretofore fixed for trial setting, this case is now regularly called pursuant to notice to counsel. G. E. Wood, Esquire, and F. E. Flynn, Esquire, Assistant United States Attorneys, appear for the Government. Duane Bird, Esquire, and Messrs. Baker and Whitney, by L. B. Whitney, Esquire, appear as counsel for the Defendants.

Upon motion of said counsel,

IT IS ORDERED that this case be, and the same is hereby continued to be set for trial, after the legal matters have been disposed of. [39]

[Title of Court and Cause.]

MOTION OF GUS B. GREENBAUM
TO QUASH INDICTMENT

COMES NOW the defendant Gus B. Greenbaum, by his attorneys, and moves that the indictment herein be quashed upon the following grounds and for the following reasons:

(1) That said indictment was not presented and returned to the Court as provided by law in that it was not presented to the Court in the presence of all of the members of the grand jury that found the same, one of said grand jurors, namely H. J. Peterson, having been unlawfully excused by the foreman of said grand jury and being not present in Court when said indictment was presented by the

foreman of said grand jury to the Court. A certified copy of the grand jury report (minute entry of February 28, 1933) is attached hereto and made a part of this motion. This motion is based on said grand jury report and the proceedings of said grand jury as shown by the records of this Court.

(2) That none of said counts charges a crime within the meaning of any law or statute of the United States of America.

(3) That none of said counts sets forth any facts which constitute an offense against the laws of the United States of [40] America.

(4) That the scheme or artifice alleged, or attempted to be alleged in each of said counts, does not constitute a fraudulent scheme or artifice, or indicate an intention or purpose to perpetrate a fraud.

(5) That in none of said counts are facts and circumstances well and sufficiently pleaded which constitute a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises.

(6) That said counts do not state facts which constitute the offense charged with such clearness and certainty as to enable said defendant to prepare his defense or to avail himself of a conviction or acquittal in defense to a subsequent prosecution for the same alleged offense, nor do said counts advise said defendant of the evidence which will be adduced against him upon the trial of this cause.

(7) That said counts while alleging that said defendant named in said indictment devised and intended to devise a scheme or artifice for obtaining money and property by means of false and fraudulent pretenses, representations and promises, wholly fail to charge any certain scheme or artifice in any of said counts.

(8) That each and every count of said indictment is uncertain, illogical, vague and indefinite and do not with sufficient particularity and accuracy set out any offense known to law.

(9) That the scheme or artifice to defraud alleged in said indictment, and in each and every count thereof, to have been devised by the defendant is not set forth with sufficient accuracy and particularity as to inform the defendant of the fraud charged against him. [41]

(10) That the allegations contained in the positive and negative averments of said indictment, and in each and every count thereof, are so contradictory, each of the other, as not to properly allege or describe a scheme or artifice to cheat or defraud.

(11) That said indictment, and each and every count thereof, in its description of the artifice or scheme to defraud alleges the attempted consummation of said scheme by means of an attempted promise of future performance.

(12) That no false or unlawful pretense, fraud, device or scheme is sufficiently and accurately set

out in said indictment, and until it is so pleaded an allegation that the Post Office Department of the "United States was used in furtherance of it, alleges no offense under the law.

(13) That the indictment, and each and every count thereof, is bad and duplicitous, in that it charges in a single count the commission of more than one offense, contrary to the provisions of Section 1024, Revised Statutes of the United States.

(14) That the setting up of more than one offense in a single count does not enable the court or jury to deal intelligently with the charge and seriously handicaps the defendant in making his defense and may prevent him from pleading former acquittal or conviction.

(15) That in each of said counts of said indictment more than one separate and distinct offense is charged in that in each of said counts separate and distinct schemes or artifices are attempted to be alleged.

(16) That each of said counts is duplicitous in that separate and distinct offenses are attempted to be charged by the attempted allegations of separate and distinct schemes and artifices.

(17) That each and every count of said indictment fails to [42] state facts sufficient to constitute an offense against the laws of the United States.

(18) That there is no allegation in said indictment showing that this defendant had anything to do with the scheme or artifice of the defendant H. D. Sanders in organizing and incorporating under the Laws of the State of Arizona the Piggly-Wiggly Holding Corporation, or the changing of the name of said corporation to the U-Save Holding Corporation, which was thereafter engaged in business in the City of Los Angeles, State of California.

(19) That there is no allegation in said indictment that this defendant had anything to do with the scheme or artifice relating to the U-Save Holding Corporation in acquiring a majority of the capital stock of the United Sanders Stores, Inc., nor with the scheme and artifice relating to the moving of certain merchandise of the value of more than \$100,000, from the warehouse of United Sanders Stores, Inc., of Phoenix, Tucson and Nogales, Arizona, to Los Angeles, California.

(20) That it cannot be ascertained from said indictment, or any count thereof, whether or not this defendant ever at any time mailed, or caused to be mailed, any letters, circulars or advertisements pertaining to the alleged fraudulent schemes set forth in each count of the indictment.

(21) That it cannot be ascertained from said indictment, or any count thereof, whether this defendant was at any time a stockholder or director,

or officer, of the corporations mentioned in said indictment.

(22) That in and by said counts of said indictment it appears that all of the defendants named therein could not be guilty of the offenses charged.

(23) That said counts are defective in that they plead conclusions of fact and of law.

(24) That the alleged scheme or artifice set forth in said [43] counts and each of them wholly fails to disclose such a scheme or artifice as is reasonably calculated to defraud.

(25) That the alleged use of the postoffice establishment of the United States of America by said defendant, in the manner and form as alleged in each and all of the said counts, affirmatively establishes by the allegations of the indictment and the several counts thereof in respect thereto that the same was not and could not have been used for the purpose of executing any such schemes or artifices as is attempted to be alleged in said several counts.

(26) That separate and distinct offenses not capable of being united in the same indictment are improperly joined in said indictment.

(27) That separate and distinct offenses not capable of being united in the same count are improperly joined in each and every count of said indictment.

(28) That there is a misjoinder of offenses in said indictment and in each and every count thereof.

(29) That there is a misjoinder of parties defendant in said indictment and in each and every count thereof.

WHEREFORE, defendant prays that said indictment be quashed and that he be dismissed and discharged therefrom.

BAKER & WHITNEY
LAWRENCE L. HOWE

Attorneys for Defendant Gus B. Greenbaum 703
Luhrs Tower Phoenix, Arizona.

Received copy this 4th day of October, 1933.

CLIFTON MATHEWS
United States District Attorney. [44]

In the United States District Court
for the District of Arizona

TUESDAY, FEBRUARY 28, 1933

November 1932 Term

At Tucson

HONORABLE ALBERT M. SAMES, United
States District Judge, presiding.

MISC. GRAND JURY REPORT

Comes now the Grand Jury duly empaneled and sworn at this term of Court, all members present except H. J. Peterson. Whereupon, their Foreman reports that he has excused said Grand Juror this

date and it is ordered that the said H. J. Peterson be excused from being present at this report. Thereupon said Grand Jury by and through their Foreman report that they have found seventy-three True Bills and that twelve or more of their number have concurred in the finding of said indictments, and thirty of said indictments charging offenses committed in the Tucson Division of this Court are now presented to the Court in the presence of the Grand Jury by their Foreman and thereupon filed by the Clerk and numbered C-6508 Tucson and C-6510 Tucson to C-6538 Tucson, inclusive; and ten of said indictments charging offenses committed in the Globe Division of this Court are presented to the Court in the presence of the Grand Jury by their Foreman, and thereupon it is ordered by the Court that said indictments be filed and docketed in the Globe Division of this Court and said indictments are thereupon filed by the Clerk and numbered C-1369 Globe to C-1378 Globe, inclusive; and thirty-three of said indictments charging offenses committed in the Phoenix Division of this Court are presented to the Court in the presence of the Grand Jury by their Foreman, and Thereupon it is ordered by the Court that said indictments be filed and docketed in the Phoenix Division of this Court and said indictments are thereupon filed by the Clerk and numbered C-4848 Phoenix to C-4870 Phoenix, inclusive, and C-4872 Phoenix to C-4881 Phoenix, inclusive.

Said Grand Jury further report that they have ignored [45] the following matters:

GJ-6086 Tucson, United States of America vs. Ethel Clemens

GJ-6050 Tucson, United States of America vs. Ysidro Marquez

GJ-6118 Tucson, United States of America vs. Pedro Orozco

GJ-3644 Phoenix, United States of America vs. Panfila Ortiz

Whereupon, said Grand Jury is excused subject to call and the further order of the Court.

Thereupon, J. S. Wheeler, Esquire, Assistant United States Attorney, presents to the Court an indictment against Jose Jesus Reyes, and represents to the Court that said indictment was voted on by the grand jury and considered by all members thereof and found to be a True Bill, more than twelve of their number having voted to find a True Bill in said case. John C. Gung'l, Esquire, United States Attorney, presents to the Court an indictment against M. C. Little, and makes a like representation to the Court as to said indictment and exhibits the minutes of said Grand Jury, and it appearing to the Court from said minutes that more than twelve Grand Jurors in each of said cases voted for True Bills therein and it further appearing to the Court that said indictments have been endorsed by the Foreman of the Grand Jury as True Bills, it is ordered that the indictment against Jose Jesus

Reyes be numbered C-4871 Phoenix and filed and docketed in the Phoenix Division of this Court and that the indictment against M. C. Little be numbered C-6509 Tucson and filed and docketed in the Tucson Division of this Court. [46]

The United States District Court for the
District of Arizona

United States of America
District of Arizona—ss.

I, J. LEE BAKER, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect, and complete copy of GRAND JURY REPORT (Minute entry of February 28, 1933) as the same appears from the original record remaining in my office.

WITNESS my hand and the seal of said Court this 13th day of March, 1933.

[Seal]

J. LEE BAKER,

Clerk,

By WM. H. LOVELESS

Deputy.

[Endorsed]: Filed OCT 4 1933 [47]

[Title of Court and Cause.]

MOTION OF CHARLES GREENBAUM
TO QUASH INDICTMENT

COMES NOW the defendant Charles Greenbaum, by his attorneys, and moves that the indictment herein be quashed upon the following grounds and for the following reasons:

(1) That said indictment was not presented and returned to the Court as provided by law in that it was not presented to the Court in the presence of all of the members of the grand jury that found the same, one of said grand jurors, namely, H. J. Peterson, having been unlawfully excused by the foreman of said grand jury and being not present in Court when said indictment was presented by the foreman of said grand jury to the court. A certified copy of the grand jury report (Minute Entry of February 28, 1933) is attached hereto and made a part of this motion. This motion is based on said grand jury report and the proceedings of said grand jury as shown by the records of this Court.

(2) That none of said counts charges a crime within the meaning of any law or statute of the United States of America.

(3) That none of said counts sets forth any facts which constitute an offense against the laws of the United States of America. [48]

(4) That the scheme or artifice alleged, or attempted to be alleged in each of said counts, does

not constitute a fraudulent scheme or artifice, or indicate an intention or purpose to perpetuate a fraud.

(5) That in none of said counts are facts and circumstances well and sufficiently pleaded which constitute a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises.

(6) That said counts do not state facts which constitute the offense charged with such clearness and certainty as to enable said defendant to prepare his defense or to avail himself of a conviction or acquittal in defense to a subsequent prosecution for the same alleged offense, nor do said counts advise said defendant of the evidence which will be adduced against him upon the trial of this cause.

(7) That said counts while alleging that said defendant named in said indictment devised and intended to devise a scheme or artifice for obtaining money and property by means of false and fraudulent pretenses, representations and promises, wholly fail to charge any certain scheme or artifice in any of said counts.

(8) That each and every count of said indictment is uncertain, illogical, vague and indefinite and do not with sufficient particularity and accuracy set out any offense known to law.

(9) That the scheme or artifice to defraud alleged in said indictment, and in each and every

count thereof, to have been devised by the defendant is not set forth with sufficient accuracy and particularity as to inform the defendant of the fraud charged against him.

(10) That the allegations contained in the positive and negative averments of said indictment, and in each and every count [49] thereof, are so contradictory, each of the other, as not to properly allege or describe a scheme or artifice to cheat or defraud.

(11) That said indictment, and each and every count thereof, in its description of the artifice or scheme to defraud alleges the attempted consummation of said scheme by means of an attempted promise of future performance.

(12) That no false or unlawful pretense, fraud, device or scheme is sufficiently and accurately set out in said indictment, and until it is so pleaded an allegation that the Post Office Department of the United States was used in furtherance of it, alleges no offense under the law.

(13) That the indictment, and each and every count thereof, is bad and duplicitous, in that it charges in a single count the commission of more than one offense, contrary to the provisions of Section 1024, Revised Statutes of the United States.

(14) That the setting up of more than one offense in a single count does not enable the court or jury to deal intelligently with the charge and seri-

ously handicaps the defendant in making his defense and may prevent him from pleading former acquittal or conviction.

(15) That in each of said counts of said indictment more than one separate and distinct offense is charged in that each of said counts separate and distinct schemes or artifices are attempted to be alleged.

(16) That each of said counts is duplicitous in that separate and distinct offenses are attempted to be charged by the attempted allegations of separate and distinct schemes and artifices.

(17) That each and every count of said indictment fails to state facts sufficient to constitute an offense against the laws of the United States.

(18) That there is no allegation in said indictment showing [50] that this defendant had anything to do with the scheme or artifice of the defendant H. D. Sanders in organizing and incorporating under the laws of the State of Arizona the Piggly-Wiggly Holding Corporation, or the changing of the name of said corporation to the U-Save Holding Corporation, which was thereafter engaged in business in the City of Los Angeles, State of California.

(19) That there is no allegation in said indictment that this defendant had anything to do with the scheme or artifice relating to the U-Save Holding Corporation in acquiring a majority of the

capital stock of United Sanders Stores, Inc., nor with the scheme and artifice relating to the moving of certain merchandise of the value of more than \$100,000.00 from the warehouse of United Sanders Stores, Inc., of Phoenix, Tucson and Nogales, Arizona, to Los Angeles, California.

(20) That it cannot be ascertained from said indictment, or any count thereof, whether or not this defendant ever at any time, mailed, or caused to be mailed, any letters, circulars or advertisements pertaining to the alleged fraudulent schemes set forth in each count of the indictment.

(21) That it cannot be ascertained from said indictment, or any count thereof, whether this defendant was at any time a stockholder or director, or officer, of the corporations mentioned in said indictment.

(22) That in and by said counts of said indictment it appears that all of the defendants named therein could not be guilty of the offenses charged.

(23) That said counts are defective in that they plead conclusions of fact and of law.

(24) That the alleged scheme or artifice set forth in said counts and each of them wholly fails to disclose such a scheme or artifice as is reasonably calculated to defraud. [51]

(25) That the alleged use of the postoffice establishment of the United States of America by said

defendant, in the manner and form as alleged in each and all of the said counts, affirmatively establishes by the allegations of the indictment and the several counts thereof in respect thereto that the same was not and could not have been used for the purpose of executing any such schemes or artifices as is attempted to be alleged in said several counts.

(26) That separate and distinct offenses not capable of being united in the same indictment are improperly joined in said indictment.

(27) That separate and distinct offenses not capable of being united in the same count are improperly joined in each and every count of said indictment.

(28) That there is a misjoinder of offenses in said indictment and in each and every count thereof.

(29) That there is a misjoinder of parties defendant in said indictment and in each and every count thereof.

WHEREFORE, defendant prays that said indictment be quashed and that he be dismissed and discharged therefrom.

BAKER & WHITNEY
LAWRENCE L. HOWE

Attorneys for Defendant Charles Greenbaum 703
Luhrs Tower Phoenix Arizona

Received copy this 4th day of October, 1933.

CLIFTON MATHEWS

United States District Attorney. [52]

In the United States District Court
For the District of Arizona

TUESDAY, FEBRUARY 28, 1933

November 1932 Term

At Tucson

HONORABLE ALBERT M. SAMES, United
States District Judge, Presiding.

[Title of Cause.]

MISC. GRAND JURY REPORT

Comes now the Grand Jury duly empaneled and sworn at this term of Court, all members present except H. J. Peterson. Whereupon, their Foreman reports that he has excused said Grand Juror this date and it is ordered that the said H. J. Peterson be excused from being present at this report. Thereupon said Grand Jury by and through their Foreman report that they have found seventy-three True Bills and that twelve or more of their number have concurred in the finding of said indictments, and thirty of said indictments charging offenses committed in the Tucson Division of this Court are now presented to the Court in the presence of the Grand Jury by their Foreman and thereupon filed by the Clerk and numbered C-6508 Tucson and C-6510 Tucson to C-6538 Tucson, inclusive; and ten of said indictments charging offenses committed in the Globe Division of this Court are presented to the Court in the presence of the Grand Jury by their Foreman, and there-

upon it is ordered by the Court that said indictments be filed and docketed in the Globe Division of this Court and said indictments are thereupon filed by the Clerk and numbered C-1369 Globe to C-1378 Globe, inclusive; and thirty-three of said indictments charging offenses committed in the Phoenix Division of this Court are presented to the Court in the presence of the Grand Jury by their Foreman, and Thereupon it is ordered by the Court that said indictments be filed and docketed in the Phoenix Division of this Court and said indictments are thereupon filed by the Clerk and numbered C-4848 Phoenix to C-4870 Phoenix, inclusive, and C-4872 Phoenix to C-4881 Phoenix, inclusive.

Said Grand Jury further report that they have ignored [53] the following matters:

GJ-6086 Tucson, United States of America vs. Ethel Clemens

GJ-6060 Tucson, United States of America vs. Ysidro Marquez

GJ-6118 Tucson, United States of America vs. Pedro Orozco

GJ-3644 Phoenix, United States of America vs. Panfila Ortiz

Whereupon, said Grand Jury is excused subject to call and the further order of the Court.

Thereupon, J. S. Wheeler, Esquire, Assistant United States Attorney, presents to the Court an

indictment against Jose Jesus Reyes, and represents to the Court that said indictment was voted on by the grand jury and considered by all members thereof and found to be a True Bill, more than twelve of their number having voted to find a True Bill in said case. John C. Gung'l, Esquire, United States Attorney, presents to the Court an indictment against M. C. Little, and makes a like representation to the Court as to said indictment and exhibits the minutes of said Grand Jury, and it appearing to the Court from said minutes that more than twelve Grand Jurors in each of said cases voted for True Bills therein and it further appearing to the Court that said indictments have been endorsed by the Foreman of the Grand Jury as True Bills, it is ordered that the indictment against Jose Jesus Reyes be numbered C-4871 Phoenix and filed and docketed in the Phoenix Division of this Court and that the indictment against M. C. Little be numbered C-6509 Tucson and filed and docketed in the Tucson Division of this Court.

[54]

The United States District Court For
The District of Arizona.

United States of America,
District of Arizona.—ss.

I, J. LEE BAKER, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true,

perfect, and complete copy of GRAND JURY REPORT (Minute entry of February 28, 1933) as the same appears from the original record remaining in my office.

WITNESS my hand and the seal of said Court this 13th day of March, 1933.

[Seal]

J. LEE BAKER,

Clerk

By WM. H. LOVELESS

Deputy.

[Endorsed]: Filed Oct 4 1933 [55]

[Title of Court and Cause.]

MOTION OF WILLIAM GREENBAUM TO
QUASH INDICTMENT.

COMES NOW the defendant William Greenbaum, by his attorneys, and moves that the indictment herein be quashed upon the following grounds and for the following reasons:

(1) That said indictment was not presented and returned to the Court as provided by law in that it was not presented to the Court in the presence of all of the members of the grand jury that found the same, one of said grand jurors, namely, H. J. Peterson, having been unlawfully excused by the foreman of said grand jury and being not present in Court when said indictment was presented by

the foreman of said grand jury to the Court. A certified copy of the grand jury report (minute entry of February 28, 1933) is attached hereto and made a part of this motion. This motion is based on said grand jury report and the proceedings of said grand jury as shown by the records of this Court.

(2) That none of said counts charges a crime within the meaning of any law or statute of the United States of America.

(3) That none of said counts sets forth any facts which constitute an offense against the laws of the United States of [56] America.

(4) That the scheme or artifice alleged, or attempted to be alleged in each of said counts, does not constitute a fraudulent scheme or artifice, or indicate an intention or purpose to perpetrate a fraud.

(5) That in none of said counts are facts and circumstances well and sufficiently pleaded which constitute a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises.

(6) That said counts do not state facts which constitute the offense charged with such clearness and certainty as to enable said defendant to prepare his defense or to avail himself of a conviction or acquittal in defense to a subsequent prosecution

for the same alleged offense, nor do said counts advise said defendant of the evidence which will be adduced against him upon the trial of this cause.

(7) That said counts while alleging that said defendant named in said indictment devised and intended to devise a scheme or artifice for obtaining money and property by means of false and fraudulent pretenses, representations and promises, wholly fail to charge any certain scheme or artifice in any of said counts.

(8) That each and every count of said indictment is uncertain, illogical, vague and indefinite and do not with sufficient particularity and accuracy set out any offense known to law.

(9) That the scheme or artifice to defraud alleged in said indictment, and in each and every count thereof, to have been devised by the defendant is not set forth with sufficient accuracy and particularity as to inform the defendant of the fraud charged against him. [57]

(10) That the allegations contained in the positive and negative averments of said indictment, and in each and every count thereof, are so contradictory, each of the other, as not to properly allege or describe a scheme or artifice to cheat or defraud.

(11) That said indictment, and each and every count thereof, in its description of the artifice or scheme to defraud alleges the attempted consumma-

tion of said scheme by means of an attempted promise of future performance.

(12) That no false or unlawful pretense, fraud, device or scheme is sufficiently and accurately set out in said indictment, and until it is so pleaded an allegation that the Post Office Department of the United States was used in furtherance of it, alleges no offense under the law.

(13) That the indictment, and each and every count thereof, is bad and duplicitous, in that it charges in a single count the commission of more than one offense, contrary to the provisions of Section 1024, Revised Statutes of the United States.

(14) That the setting up of more than one offense in a single count does not enable the court or jury to deal intelligently with the charge and seriously handicaps the defendant in making his defense and may prevent him from pleading former acquittal or conviction.

(15) That in each of said counts of said indictment more than one separate and distinct offense is charged in that in each of said counts separate and distinct schemes or artifices are attempted to be alleged.

(16) That each of said counts is duplicitous in that separate and distinct offenses are attempted to be charged by the attempted allegations of separate and distinct schemes and artifices.

(17) That each and every count of said indictment fails to [58] state facts sufficient to constitute an offense against the laws of the United States.

(18) That there is no allegation in said indictment showing that this defendant had anything to do with the scheme or artifice of the defendant H. D. Sanders in organizing and incorporating under the Laws of the State of Arizona the Piggly-Wiggly Holding Corporation, or the changing of the name of said corporation to the U-Save Holding Corporation, which was thereafter engaged in business in the City of Los Angeles, State of California.

(19) That there is no allegation in said indictment that this defendant had anything to do with the scheme or artifice relating to the U-Save Holding Corporation in acquiring a majority of the capital stock of United Sanders Stores, Inc., nor with the scheme and artifice relating to the moving of certain merchandise of the value of more than \$100,000.00 from the warehouse of United Sanders Stores, Inc., of Phoenix, Tucson and Nogales, Arizona, to Los Angeles, California.

(20) That it cannot be ascertained from said indictment, or any count thereof, whether or not this defendant ever at any time mailed, or caused to be mailed, any letters, circulars or advertisements pertaining to the alleged fraudulent schemes set forth in each count of the indictment.

(21) That it cannot be ascertained from said indictment, or any count thereof, whether this defendant was at any time a stockholder or director, or officer, of the corporations mentioned in said indictment.

(22) That in and by said counts of said indictment it appears that all of the defendants named therein could not be guilty of the offenses charged.

(23) That said counts are defective in that they plead conclusions of fact and of law.

(24) That the alleged scheme or artifice set forth in said [59] counts and each of them wholly fails to disclose such a scheme or artifice as is reasonably calculated to defraud.

(25) That the alleged use of the postoffice establishment of the United States of Arizona by said defendant, in the manner and form as alleged in each and all of the said counts, affirmatively establishes by the allegations of the indictment and the several counts thereof in respect thereto that the same was not and could not have been used for the purpose of executing any such schemes or artifices as is attempted to be alleged in said several counts.

(26) That separate and distinct offenses not capable of being united in the same indictment are improperly joined in said indictment.

(27) That separate and distinct offenses not capable of being united in the same count are im-

properly joined in each and every count of said indictment.

(28) That there is a misjoinder of offenses in said indictment and in each and every count thereof.

(29) That there is a misjoinder of parties defendant in said indictment and in each and every count thereof.

WHEREFORE, defendant prays that said indictment be quashed and that he be dismissed and discharged therefrom.

BAKER & WHITNEY
LAWRENCE L. HOWE

Attorneys for Defendant William Greenbaum 703
Luhrs Tower Phoenix Arizona

Received copy this 4th day of October, 1933.

CLIFTON MATHEWS
United States District Attorney. [60]

In the United States District Court for the
District of Arizona.

TUESDAY, FEBRUARY 28, 1933

November 1932 Term

At Tucson

HONORABLE ALBERT M. SAMES, United
States District Judge, Presiding.

MISC. GRAND JURY REPORT.

Comes now the Grand Jury duly empaneled and sworn at this term of Court, all members present

except H. J. Peterson. Whereupon, their Foreman reports that he has excused said Grand Juror this date and it is ordered that the said H. J. Peterson be excused from being present at this report. Thereupon said Grand Jury by and through their Foreman report that they have found seventy-three True Bills and that twelve or more of their number have concurred in the finding of said indictments, and thirty of said indictments charging offenses committed in the Tucson Division of this Court are now presented to the Court in the presence of the Grand Jury by their Foreman and thereupon filed by the Clerk and numbered C-6508 Tucson and C-6510 Tucson to C-6538 Tucson, inclusive; and ten of said indictments charging offenses committed in the Globe Division of this Court are presented to the Court in the presence of the Grand Jury by their Foreman, and thereupon it is ordered by the Court that said indictments be filed and docketed in the Globe Division of this Court and said indictments are thereupon filed by the Clerk and numbered C-1369 Globe to C-1378 Globe, inclusive; and thirty-three of said indictments charging offenses committed in the Phoenix Division of this Court are presented to the Court in the presence of the Grand Jury by their Foreman, and Thereupon it is ordered by the Court that said indictments be filed and docketed in the Phoenix Division of this Court and said indictments are thereupon filed by the Clerk and numbered C-4848 Phoenix to C-4870

Phoenix, inclusive, and C-4872 Phoenix to C-4881 Phoenix, inclusive.

Said Grand Jury further report that they have ignored [61] the following matters:

GJ-6086 Tucson, United States of America vs. Ethel Clemens

GJ-6050 Tucson, United States of America vs. Ysidro Marquez

GJ-6118 Tucson, United States of America vs. Pedro Orozco

GJ-3644 Phoenix, United States of America vs. Panfila Ortiz

Whereupon, said Grand Jury is excused subject to call and the further order of the Court.

Thereupon, J. S. Wheeler, Esquire, Assistant United States Attorney, presents to the Court an indictment against Jose Jesus Reyes, and represents to the Court that said indictment was voted on by the grand jury and considered by all members thereof and found to be a True Bill, more than twelve of their number having voted to find a True Bill in said case. John C. Gung'l, Esquire, United States Attorney, presents to the Court an indictment against M. C. Little, and makes a like representation to the Court as to said indictment and exhibits the minutes of said Grand Jury, and it appearing to the Court from said minutes that more than twelve Grand Jurors in each of said cases voted for True Bills therein and it further appearing to the Court that said indictments have

been endorsed by the Foreman of the Grand Jury as True Bills, it is ordered that the indictment against Jose Jesus Reyes be numbered C-4871 Phoenix and filed and docketed in the Phoenix Division of this Court and that the indictment against M. C. Little be numbered C-6509 Tucson and filed and docketed in the Tucson Division of this Court. [62]

The United States District Court For
The District of Arizona.

United States of America,
District of Arizona.—ss:

I, J. LEE BAKER, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect, and complete copy of GRAND JURY REPORT (Minute entry of February 28, 1933) as the same appears from the original record remaining in my office.

WITNESS my hand and the seal of said Court this 13th day of March, 1933.

[Seal]

J. LEE BAKER,

Clerk

By WM. H. LOVELESS,

Deputy.

[Endorsed]: Filed Oct 4 1933 [63]

[Title of Court and Cause.]

SEPARATE DEMURRER OF GUS B.
GREENBAUM TO THE INDICTMENT

COMES NOW Gus B. Greenbaum, one of the defendants above named, by his attorneys, and by leave of Court first had and obtained withdraws his plea of not guilty, and demurs to the indictment found herein, and separately as to each and every count thereof, and for grounds of demurrer alleges:

(a) That none of said counts charges a crime within the meaning of any law or statute of the United States of America.

(b) That none of said counts sets forth any facts which constitute an offense against the laws of the United States of America.

(c) That the scheme or artifice alleged, or attempted to be alleged in each of said counts, does not constitute a fraudulent scheme or artifice, or indicate an intention or purpose to perpetrate a fraud.

(d) That in none of said counts are facts and circumstances well and sufficiently pleaded which constitute a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises.

(e) That said counts do not state facts which constitute [64] the offense charged with such clear-

ness and certainty as to enable said defendant to prepare his defense or to avail himself of a conviction or acquittal in defense to a subsequent prosecution for the same alleged offense, nor do said counts advise said defendant of the evidence which will be adduced against him upon the trial of this cause.

(f) That said counts while alleging that said defendant named in said indictment devised and intended to devise a scheme or artifice for obtaining money and property by means of false and fraudulent pretenses, representations and promises, wholly fail to charge any certain scheme or artifice in any of said counts.

(g) That each and every count of said indictment is uncertain, illogical, vague and indefinite and do not with sufficient particularity and accuracy set out any offense known to law.

(h) That the scheme or artifice to defraud alleged in said indictment, and in each and every count thereof, to have been devised by the defendant is not set forth with sufficient accuracy and particularity as to inform the defendant of the fraud charged against him.

(i) That the allegations contained in the positive and negative averments of said indictment, and in each and every count thereof, are so contradictory, each of the other, as not to properly allege or describe a scheme or artifice to cheat or defraud.

(j) That said indictment, and each and every count thereof, in its description of the artifice or scheme to defraud alleges the attempted consummation of said scheme by means of an attempted promise of future performances.

(k) That no false or unlawful pretense, fraud, device or [65] scheme is sufficiently and accurately set out in said indictment, and until it is so pleaded an allegation that the Post Office Department of the United States was used in furtherance of it, alleges no offense under the law.

(l) That the indictment, and each and every count thereof, is bad and duplicitous, in that it charges in a single count the commission of more than one offense, contrary to the provisions of Section 1024, Revised Statutes of the United States.

(m) That the setting up of more than one offense in a single count does not enable the Court or jury to deal intelligently with the charge and seriously handicaps the defendant in making his defense and may prevent him from pleading former acquittal or conviction.

(n) That in each of said counts of said indictment more than one separate and distinct offense is charged in that in each of said counts separate and distinct schemes or artifices are attempted to be alleged.

(o) That each of said counts is duplicitous in that separate and distinct offenses are attempted

to be charged by the attempted allegation of separate and distinct schemes and artifices.

(p) That each and every count of said indictment fails to state facts sufficient to constitute an offense against the laws of the United States.

(q) That there is no allegation in said indictment showing that this defendant had anything to do with the scheme or artifice of the defendant H. D. Sanders in organizing and incorporating under the laws of the State of Arizona the Piggly-Wiggly Holding Corporation, or the changing of the name of said corporation to the U-Save Holding Corporation, which was thereafter engaged in business in the City of Los Angeles, State of California.

(r) That there is no allegation in said indictment that [66] this defendant had anything to do with the scheme or artifice relating to the U-Save Holding Corporation in acquiring a majority of the capital stock of United Sanders Stores, Inc., nor with the schemes and artifice relating to the moving of certain merchandise of the value of more than \$100,000.00 from the warehouse of United Sanders Stores, Inc., of Phoenix, Tucson and Nogales, Arizona, to Los Angeles, California.

(s) That it cannot be ascertained from said indictment, or any count thereof, whether or not this defendant ever at any time mailed, or caused to be mailed, any letters, circulars, or advertisements pertaining to the alleged fraudulent schemes set forth in each count of the indictment.

(t) That it cannot be ascertained from said indictment, or any count thereof, whether this defendant was at any time a stockholder or director, or officer, of the corporation mentioned in said indictment, or either thereof.

(u) That in and by said counts of said indictment it appears that all of the defendants named therein could not be guilty of the offenses charged.

(v) That said counts are defective in that they plead conclusions of fact and of law.

(w) That the alleged scheme or artifice set forth in said counts and each of them wholly fails to disclose such a scheme or artifice as is reasonably calculated to defraud.

(x) That the alleged use of the postoffice establishment of the United States of America by said defendant, in the manner and form as alleged in each and all of the said counts, affirmatively establishes by the allegations of the indictment and the several counts thereof in respect thereto that the same was not and could not have been used for the purpose of executing [67] any such schemes or artifices as is attempted to be alleged in said several counts.

(y) That separate and distinct offenses not capable of being united in the same indictment are improperly joined in said indictment.

(z) That separate and distinct offenses not capable of being united in the same count are

improperly joined in each and every count of said indictment.

(aa) That there is a misjoinder of offenses in said indictment and in each and every count thereof.

(bb) That there is a misjoinder of parties defendant in said indictment and in each and every count thereof.

WHEREFORE, this defendant prays that said indictment and each and every count thereof, be adjudged insufficient; that this demurrer be sustained; and that this defendant be dismissed and discharged.

BAKER & WHITNEY
LAWRENCE L. HOWE

Attorneys for Defendant Gus. B. Greenbaum 703
Luhrs Tower, Phoenix, Arizona.

Received copy this 4th day of October, 1933.

CLIFTON MATHEWS
United States District Attorney

[Endorsed]: FILED OCT 4 1933 [68]

[Title of Court and Cause.]

SEPARATE DEMURRER OF CHARLES
GREENBAUM TO THE INDICTMENT

COMES NOW Charles Greenbaum, one of the defendants above named, by his attorneys, and by

leave of Court first had and obtained withdraws his plea of not guilty, and demurs to the indictment found herein, and separately as to each and every count thereof, and for grounds of demurrer alleges:

(a) That none of said counts charges a crime within the meaning of any law or statute of the United States of America.

(b) That none of said counts sets forth any facts which constitute an offense against the laws of the United States of America.

(c) That the scheme or artifice alleged, or attempted to be alleged in each of said counts, does not constitute a fraudulent scheme or artifice, or indicate an intention or purpose to perpetrate a fraud.

(d) That in none of said counts are facts and circumstances well and sufficiently pleaded which constitute a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises.

(e) That said counts do not state facts which constitute [69] the offense charged with such clearness and certainty as to enable said defendant to prepare his defense or to avail himself of a conviction or acquittal in defense to a subsequent prosecution for the same alleged offense, nor do said counts advise said defendant of the evidence

which will be adduced against him upon the trial of this cause.

(f) That said counts while alleging that said defendant named in said indictment devised and intended to devise a scheme or artifice for obtaining money and property by means of false and fraudulent pretenses, representations and promises, wholly fail to charge any certain scheme or artifice in any of said counts.

(g) That each and every count of said indictment is uncertain, illogical, vague and indefinite and do not with sufficient particularity and accuracy set out any offense known to law.

(h) That the scheme or artifice to defraud alleged in said indictment, and in each and every count thereof, to have been devised by the defendant is not set forth with sufficient accuracy and particularity as to inform the defendant of the fraud charged against him.

(i) That the allegations contained in the positive and negative averments of said indictment, and in each and every count thereof, are so contradictory, each of the other, as not to properly allege or describe a scheme or artifice to cheat or defraud.

(j) That said indictment, and each and every count thereof, in its description of the artifice or scheme to defraud alleges the attempted consummation of said scheme by means of an attempted promise of future performance.

(k) That no false or unlawful pretense, fraud, device or [70] scheme is sufficiently and accurately set out in said indictment, and until it is so pleaded an allegation that the Post Office Department of the United States was used in furtherance of it, alleges no offense under the law.

(l) That the indictment, and each and every count thereof, is bad and duplicitous, in that it charges in a single count the commission of more than one offense, contrary to the provisions of Section 1024, Revised Statutes of the United States.

(m) That the setting up of more than one offense in a single count does not enable the Court or jury to deal intelligently with the charge and seriously handicaps the defendant in making his defense and may prevent him from pleading former acquittal or conviction.

(n) That in each of said counts of said indictment more than one separate and distinct offense is charged in that in each of said counts separate and distinct schemes or artifices are attempted to be alleged.

(o) That each of said counts is duplicitous in that separate and distinct offenses are attempted to be charged by the attempted allegation of separate and distinct schemes and artifices.

(p) That each and every count of said indictment fails to state facts sufficient to constitute an offense against the laws of the United States.

(q) That there is no allegation in said indictment showing that this defendant had anything to do with the scheme or artifice of the defendant H. D. Sanders in organizing and incorporating under the laws of the State of Arizona the Piggly-Wiggly Holding Corporation, or the changing of the name of said corporation to the U-Save Holding Corporation, which was thereafter engaged in business in the City of Los Angeles, State of California.

(r) That there is no allegation in said indictment that [71] this defendant had anything to do with the scheme or artifice relating to the U-Save Holding Corporation in acquiring a majority of the capital stock of United Sanders Stores, Inc., nor with the schemes and artifice relating to the moving of certain merchandise of the value of more than \$100,000.00 from the warehouse of United Sanders Stores, Inc., of Phoenix, Tucson and Nogales, Arizona, to Los Angeles, California.

(s) That it cannot be ascertained from said indictment, or any count thereof, whether or not this defendant ever at any time mailed, or caused to be mailed, any letters, circulars, or advertisements pertaining to the alleged fraudulent schemes set forth in each count of the indictment.

(t) That it cannot be ascertained from said indictment, or any count thereof, whether this defendant was at any time a stockholder or director, or officer, of the corporations mentioned in said indictment, or either thereof.

(u) That in and by said counts of said indictment it appears that all of the defendants named therein could not be guilty of the offenses charged.

(v) That said counts are defective in that they plead conclusions of fact and of law.

(w) That the alleged scheme or artifice set forth in said counts and each of them wholly fails to disclose such a scheme or artifice as is reasonably calculated to defraud.

(x) That the alleged use of the postoffice establishment of the United States of America by said defendant, in the manner and form as alleged in each and all of the said counts, affirmatively establishes by the allegations of the indictment and the several counts thereof in respect thereto that the same was not and could not have been used for the purpose of executing [72] any such schemes or artifices as is attempted to be alleged in said several counts.

(y) That separate and distinct offenses not capable of being united in the same indictment are improperly joined in said indictment.

(z) That separate and distinct offenses not capable of being united in the same count are improperly joined in each and every count of said indictment.

(aa) That there is a misjoinder of offenses in said indictment and in each and every count thereof.

(bb) That there is a misjoinder of parties defendant in said indictment and in each and every count thereof.

WHEREFORE, this defendant prays that said indictment and each and every count thereof, be adjudged insufficient; that this demurrer be sustained; and that this defendant be dismissed and discharged.

BAKER & WHITNEY
LAWRENCE L. HOWE

Attorneys for Defendant Charles Greenbaum 703
Luhrs Tower, Phoenix, Arizona.

Received copy this 4th day of October, 1933.

CLIFTON MATHEWS
United States District Attorney

[Endorsed]: FILED OCT. 4 1933 [73]

[Title of Court and Cause.]

SEPARATE DEMURRER OF WILLIAM
GREENBAUM TO THE INDICTMENT

COMES NOW William Greenbaum, one of the defendants above named, by his attorneys, and by leave of Court first had and obtained withdraws his plea of not guilty, and demurs to the indictment found herein, and separately as to each and every count thereof, and for grounds of demurrer alleges:

(a) That none of said counts charges a crime within the meaning of any law or statute of the United States of America.

(b) That none of said counts sets forth any facts which constitute an offense against the laws of the United States of America.

(c) That the scheme or artifice alleged, or attempted to be alleged in each of said counts, does not constitute a fraudulent scheme or artifice, or indicate an intention or purpose to perpetrate a fraud.

(d) That in none of said counts are facts and circumstances well and sufficiently pleaded which constitute a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises.

(e) That said counts do not state facts which constitute [74] the offense charged with such clearness and certainty as to enable said defendant to prepare his defense or to avail himself of a conviction or acquittal in defense to a subsequent prosecution for the same alleged offense, nor do said counts advise said defendant of the evidence which will be adduced against him upon the trial of this cause.

(f) That said counts while alleging that said defendant named in said indictment devised and intended to devise a scheme or artifice for obtaining money and property by means of false and fraudulent pretenses, representations and promises, wholly

fail to charge any certain scheme or artifice in any of said counts.

(g) That each and every count of said indictment is uncertain, illogical, vague and indefinite and do not with sufficient particularity and accuracy set out any offense known to law.

(h) That the scheme or artifice to defraud alleged in said indictment, and in each and every count thereof, to have been devised by the defendant is not set forth with sufficient accuracy and particularity as to inform the defendant of the fraud charged against him.

(i) That the allegations contained in the positive and negative averments of said indictment, and in each and every count thereof, are so contradictory, each of the other, as not to properly allege or describe a scheme or artifice to cheat or defraud.

(j) That said indictment, and each and every count thereof, in its description of the artifice or scheme to defraud alleges the attempted consummation of said scheme by means of an attempted promise of future performance.

(k) That no false or unlawful pretense, fraud, device or [75] scheme is sufficiently and accurately set out in said indictment, and until it is so pleaded an allegation that the Post Office Department of the United States was used in furtherance of it, alleges no offense under the law.

(l) That the indictment, and each and every count thereof, is bad and duplicitous, in that it charges in a single count the commission of more than one offense, contrary to the provisions of Section 1024, Revised Statutes of the United States.

(m) That the setting up of more than one offense in a single count does not enable the Court or jury to deal intelligently with the charge and seriously handicaps the defendant in making his defense and may prevent him from pleading former acquittal or conviction.

(n) That in each of said counts of said indictment more than one separate and distinct offense is charged in that in each of said counts separate and distinct schemes or artifices are attempted to be alleged.

(o) That each of said counts is duplicitous in that separate and distinct offenses are attempted to be charged by the attempted allegation of separate and distinct schemes and artifices.

(p) That each and every count of said indictment fails to state facts sufficient to constitute an offense against the laws of the United States.

(q) That there is no allegation in said indictment showing that this defendant had anything to do with the scheme or artifice of the defendant H. D. Sanders in organizing and incorporating under the laws of the State of Arizona the Piggly-Wiggly Holding Corporation, or the changing of

the name of said corporation to the U-Save Holding Corporation, which was thereafter engaged in business in the City of Los Angeles, State of California.

(r) That there is no allegation in said indictment that [76] this defendant had anything to do with the scheme or artifice relating to the U-Save Holding Corporation in acquiring a majority of the capital stock of United Sanders Stores, Inc., nor with the schemes and artifice relating to the moving of certain merchandise of the value of more than \$1000,000.00 from the warehouse of United Sanders Stores, Inc., of Phoenix, Tucson and Nogales, Arizona, to Los Angeles, California.

(s) That it cannot be ascertained from said indictment, or any count thereof, whether or not this defendant ever at any time mailed, or caused to be mailed, any letters, circulars, or advertisements pertaining to the alleged fraudulent schemes set forth in each count of the indictment.

(t) That it cannot be ascertained from said indictment, or any count thereof, whether this defendant was at any time a stockholder or director, or officer, of the corporation mentioned in said indictment, or either thereof.

(u) That in and by said counts of said indictment it appears that all of the defendants named therein could not be guilty of the offenses charged.

(v) That said counts are defective in that they plead conclusions of fact and of law.

(w) That the alleged scheme or artifice set forth in said counts and each of them wholly fails to disclose such a scheme or artifice as is reasonably calculated to defraud.

(x) That the alleged use of the postoffice establishment of the United States of America by said defendant, in the manner and form as alleged in each and all of the said counts, affirmatively establishes by the allegations of the indictment and the several counts thereof in respect thereto that the same was not and could not have been used for the purpose of executing [77] any such schemes or artifices as is attempted to be alleged in said several counts.

(y) That separate and distinct offenses not capable of being united in the same indictment are improperly joined in said indictment.

(z) That separate and distinct offenses not capable of being united in the same count are improperly joined in each and every count of said indictment.

(aa) That there is a misjoinder of offenses in said indictment and in each and every count thereof.

(bb) That there is a misjoinder of parties defendant in said indictment and in each and every count thereof.

WHEREFORE, this defendant prays that said indictment and each and every count thereof, be

adjudged insufficient; that this demurrer be sustained; and that this defendant be dismissed and discharged.

BAKER & WHITNEY
LAWRENCE L. HOWE

Attorneys for Defendant William Greenbaum 703
Luhrs Tower, Phoenix, Arizona.

Received copy this 4th day of October, 1933.

CLIFTON MATHEWS
United States District Attorney

[Endorsed]: FILED OCT 4 1933 [78]

Minute Entry of
MONDAY, OCTOBER 16, 1933

October 1933 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding

[Title of Cause.]

Separate Demurrers of Defendants to Indictment, and Motions of Defendants to Quash Indictments, come on regularly for hearing this day.

Clifton Mathews, Esquire, United States Attorney, and F. E. Flynn, Esquire, Assistant United States Attorney, appear for the Government. Duane Bird, Esquire, appears as counsel for defendant, A. E. Sanders. Messrs. Baker & Whitney, by L. B. Whitney, Esquire, appear as counsel for Defendants, Gus

B. Greenbaum, Charles Greenbaum, and William Greenbaum.

Upon the consent of respective counsel,

IT IS ORDERED that said Demurrers and Motions be, and the same are hereby continued and reset for hearing Monday, October 23, 1933, at the hour of ten o'clock, A. M. [79]

Minute Entry of

October 1933 Term

At Phoenix

MONDAY, OCTOBER 23, 1933

HONORABLE F. C. JACOBS, United States District Judge, Presiding

[Title of Cause.]

Separate Demurrers of Defendants to Indictment, and Motions of Defendants to Quash Indictment, come on regularly for hearing this day.

Clifton Mathews, Esquire, United States Attorney, G. E. Wood, Esquire, and F. E. Flynn, Esquire, Assistant United States Attorneys, appear for the Government.

Duane Bird, Esquire, appears as counsel for Defendant, A. E. Sanders. Messrs. Baker and Whitney, by L. B. Whitney, Esquire, appear as counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum and William Greenbaum.

Upon stipulation of Duane Bird, Esquire, Messrs. Baker and Whitney, by Louis B. Whitney, Esquire,

and Clifton Mathews, Esquire, United States Attorney,

IT IS ORDERED that Memorandum of Points and Authorities supporting the Demurrers and Motions to Quash of the Defendants, Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, stand and apply as a memorandum of Points and Authorities to the Demurrer and Motion to Quash of the Defendant, A. E. Sanders, and

IT IS FURTHER ORDERED that said Defendants be allowed to withdraw their pleas of Not Guilty heretofore entered herein, for the purpose of filing and presenting Demurrers and Motions to Quash, in accordance with the privilege granted heretofore on March 6, 1933. [80]

Argument is now had by respective counsel upon said Demurrers and Motions to Quash, and

IT IS ORDERED that said Demurrers and Motions to Quash Indictment be submitted and by the Court taken under advisement. [81]

Minute Entry of

WEDNESDAY, NOVEMBER 22, 1933

October 1933 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

Separate Demurrer to Indictment, and Motion to Quash Indictment of each of Defendants, A. E. Sanders, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, having heretofore been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

IT IS ORDERED that said Demurrer of each of said Defendants be overruled, and that an exception be entered on behalf of each defendant, and

IT IS FURTHER ORDERED that said Motion to Quash of each of said Defendants be denied, and that an exception be entered on behalf of each defendant. [82]

Minute Entry of
SATURDAY, NOVEMBER 25, 1933

October 1933 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

IT IS ORDERED that the Order heretofore entered herein on November 22, 1933, overruling Defendants' Demurrers to Indictment, be vacated, and

IT IS FURTHER ORDERED that Defendants' Demurrers to Counts 2 to 17 inclusive of the Indict-

ment be sustained; that an exception be entered on behalf of the Government, and that Defendants' Demurrers to Count one of the Indictment be overruled, and that an exception be entered on behalf of the Defendants. [83]

Minute Entry of
FRIDAY, NOVEMBER 24, 1933

October 1933 Term At Phoenix
HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

Upon motion of F. E. Flynn, Esquire, Assistant United States Attorney,

IT IS ORDERED that the time for trial setting herein be continued. [84]

Minute Entry of
SATURDAY, APRIL 14, 1934

April 1934 Term At Phoenix
HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

This being the time heretofore fixed for plea and trial setting, this case is now regularly called pursuant to notice to counsel. Clifton Mathews, Es-

quire, United States Attorney, and F. E. Flynn, Esquire, Assistant United States Attorney, appear for the Government. Duane Bird, Esquire, appears as counsel for Defendant, A. E. Sanders. Messrs. Baker and Whitney, by L. B. Whitney, Esquire, appear as counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, and

IT IS ORDERED that this case be continued and reset for plea, Saturday, April 21, 1934, at the hour of ten o'clock, A. M. [85]

Minute Entry of
SATURDAY, APRIL 21, 1934

April 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The defendant, A. E. Sanders, is present in person with his counsel Duane Bird, Esquire, and the defendants, Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, are present in person, with their counsel, Messrs. Baker and Whitney, by Louis B. Whitney, Esquire, this being the time heretofore fixed for plea herein.

Each of said defendants pleads Not Guilty, which pleas are now duly entered, and

IT IS ORDERED that this case be continued to be set for trial. [86]

Minute Entry of
MONDAY, OCTOBER 22, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

This being the time heretofore fixed for trial setting, this case is now regularly called pursuant to notice to counsel. F. E. Flynn Esquire, Assistant United States Attorney, appears for the Government. Duane Bird, Esquire, appear as counsel for Defendant, A. E. Sanders. Messrs. Baker and Whitney, by L. B. Whitney, Esquire, appear as counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, and

IT IS ORDERED that this case be set for trial Wednesday, November 7, 1934, at the hour of ten o'clock, A. M. [87]

Minute Entry of
WEDNESDAY, NOVEMBER 7, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

This case comes on regularly for trial this day. Clifton Mathews, Esquire, United States Attorney,

F. E. Flynn, Esquire, and John P. Dougherty, Esquire, Assistant United States Attorneys, appear for the Government. The Defendant, A. E. Sanders, is present in person, with his counsel, Duane Bird, Esquire. The Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, are present in person with their counsel, Messrs. Baker and Whitney, by L. B. Whitney, Esquire.

Both sides announce ready for trial.

John B. Ryan is now duly sworn to report the evidence in this case.

A lawful Jury of twelve men is now duly empaneled and sworn to try this case.

In the opinion of the Judge of this Court, the trial of this action is likely to be a protracted one, and the Court finds it necessary to empanel one (1) alternate Juror, pursuant to Section 417A, Title 28, United States Code.

It is therefore ORDERED that an alternate Juror be drawn.

Whereupon, such alternate Juror is drawn and duly sworn to try this case. [88]

Thereupon, IT IS ORDERED that all Jurors not empaneled in the trial of this case be excused to Tuesday, November 20, 1934, at the hour of ten o'clock, A. M.

Subsequently, at the hour of 12:23 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of 9:30 o'clock, A. M., Thursday, November 8, 1934, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused. [89]

Minute Entry of
THURSDAY, NOVEMBER 8, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

John P. Dougherty, Esquire, Assistant United States Attorney, now reads aloud Count One of the Indictment to the Jury, and thereafter said counsel for the Government states to the Jury, the plea of Not Guilty of each defendant to said Count of the Indictment.

Whereupon, counsel for the Defendants moves to invoke the Rule.

F. E. Flynn, Esquire, Assistant United States Attorney now moves to exclude L. D. Null from the operation of the Rule.

Duane Bird, Esquire, now moves to exclude John W. Wagner from the operation of the Rule, and

IT IS ORDERED that said Motions be granted.

Whereupon, the following witnesses are duly sworn, admonished and instructed by the Court, placed under Rule and excluded from the Court Room, except John W. Wagner and L. D. Null:

Margaret Romley	Oscar Schmidt
Anita Bellas	J. M. Nixon
Margery Day	Minor Bishop
J. L. Johnson	John Muldoon
K. C. Van Atta	John Charon [90]
Addie Driscoll	L. R. Reid
Mrs. J. O. Parsons	L. D. Null
Catherine Ryan	John W. Wagner
Tom H. Brandt	

GOVERNMENT'S CASE:

J. L. Johnson, heretofore sworn, is now called and examined on behalf of the Government.

Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, object to the introduction of any evidence, on the ground that the Indictment does not charge any offense.

Defendant, A. E. Sanders, concurs in said objection, and

IT IS ORDERED that said objections be overruled, and that an exception be entered on behalf of said Defendants.

The following Government's Exhibits are admitted and portions thereof read in evidence:

1. Articles of Incorporation of Clarence Saunders Stores, Inc., dated October 18, 1928.
2. Certificate of Amendment of Articles of Incorporation of Clarence Saunders Stores, Inc., dated January 2, 1929.
3. Certificate of Amendment of Articles of Incorporation of Arizona Clarence Saunders Stores, Inc., dated January 21, 1930.
4. Certificate of Amendment of Articles of Incorporation of United Clarence Saunders Stores, Inc., dated November 1, 1930.
5. Articles of Incorporation, Piggly Wiggly Holding Corporation of Yuma, dated April 27, 1929.
6. Certificate of Amendment of the Articles of Incorporation of the Piggly Wiggly Holding Corporation, of Yuma, dated February 19, 1930. [91]
7. Articles of Incorporation of Bond and Mortgage Corporation dated May 1, 1929.

8. Articles of Incorporation of Piggly Wiggly Southwestern Corporation, dated July 9, 1927.

9. Annual Report of Arizona Clarence Saunders Stores, Inc., as of close of Business May 31, 1929.

10. Annual Report of United Clarence Saunders Stores, Inc., as of close of Business May 31, 1930.

11. Annual Report of Bond and Mortgage Corporation, filed with Arizona Corporation Commission June 28, 1929.

12. Annual Report of Bond and Mortgage Corporation, as of close of Business May 27, 1930.

13. Annual Report of U Save Holding Corporation as of close of Business June 30, 1930.

14. Application to Arizona Corporation Commission for permit to sell stock and Permit No. 6225, Investment Company No. 2383, issued by Arizona Corporation Commission to Clarence Saunders Stores, Inc.

15. Application to Arizona Corporation Commission for permit to sell Stock and Permit No. 6310, Investment Company No. 2383, issued by Arizona Corporation Commission to Arizona Clarence Saunders Stores, Inc.

16. Application to Arizona Corporation Commission for permit to sell stock and Permit No.

4854, Investment Company No. 3970-B-2383 issued by Arizona Corporation Commission, Arizona Clarence Saunders Stores, Inc.

17. Application to Arizona Corporation Commission for permit to sell securities and Permit No. 5246, Investment Company No. 3970-B-2383 issued by Arizona Corporation Commission to United Clarence Saunders Stores, Inc.

18. Application to Arizona Corporation Commission for renewal of permit to sell securities and Permit No. 5553, Investment Company No. 3970-B-2383, issued by Arizona Corporation Commission to United Clarence Saunders Stores, Inc. [92]

19. Annual Report of United Clarence Saunders Stores, Inc., for the fiscal year ending June 30, 1930.

F. E. Flynn, Esquire, Assistant United States Attorney, now moves that witnesses heretofore sworn and excluded under the Rule, be now instructed that they may converse with W. G. Means, regarding this case, and that said W. G. Means be granted leave to interview said witnesses, to which Motion counsel for the defendants object, and

IT IS ORDERED that said objection be overruled, to which ruling and Order of the Court, the Defendants except.

Thereupon, the witnesses heretofore excluded under the Rule are now called and instructed that

they may converse with W. G. Means with reference to this case.

And thereupon, at the hour of 11:55 o'clock, A. M., IT IS ORDERED that the further trial of this case be continued to the hour of 2:02 o'clock, P. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 2:02 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

J. L. Johnson, heretofore sworn, is now recalled and further examined on behalf of the Government.

Government's Exhibit No. 20, Application to Arizona Corporation Commission for Permit to Deal in Securities and Permit No. 13, issued to Bond and Mortgage Corporation, by Order of The Arizona Corporation Commission, dated December 3, 1929, and Application of each of the following for License as an Agent of a Dealer in Securities:

Charles Greenbaum

William Greenbaum

G. B. Greenbaum [93]

Joseph Rose

S. M. Greenbaum

Marco Messina

is now admitted and portions thereof read in evidence.

J. M. Nixon, heretofore sworn, is now called and examined on behalf of the Government.

The following Government's Exhibits are admitted and portions thereof read in evidence:

23. Certified copy, Articles of Incorporation of Clarence Saunders Stores, Inc., dated October 18, 1928, and Certificate of Incorporation.

24. Minutes of first Meeting of Incorporators of Clarence Saunders Stores, Inc., dated November 28, 1928, Subscription List and Waiver of Notice of Meeting.

25. Minutes of first Meeting of the Directors of Clarence Saunders Stores, Inc., dated November 28, 1928.

26. Letter dated November 28, 1928 to Clarence Saunders Stores, Inc., Nogales, Arizona, signed, A. E. Sanders.

27. Minutes of Special Meeting of the Stockholders of the Clarence Saunders Stores, Inc., dated January 2, 1929.

28. Minutes of Special Meeting of Board of Directors of the Arizona Clarence Saunders Stores, Inc., dated January 22, 1929.

29. Minutes of Special Meeting of Board of

Directors of the Arizona Clarence Saunders Stores, Inc., dated March 16, 1929.

Counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, now moves to Strike Government's Exhibit Number 29, and

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, counsel for Defendants except.

And thereupon, at the hour of 3:17 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of 3:40 o'clock, P. M., this date, to which time the [94] Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 3:40 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

J. M. Nixon, heretofore sworn, is now recalled and further examined on behalf of the Government.

The following Government's Exhibits are admitted and portions thereof read in evidence:

30. Minutes of Special Meeting of Board of Directors of the Arizona Clarence Saunders Stores, Inc., dated June 29, 1929.

31. Minutes of Special Meeting of Board of Directors of the Arizona Clarence Saunders Stores, Inc., dated June 29, 1929.

32. Minutes of Special Meeting of Board of Directors of Arizona Clarence Saunders Stores, Inc., dated October 21, 1929.

33. Minutes of Special Meeting of Board of Directors of Arizona Clarence Saunders Stores, Inc., dated December 10, 1929.

22. Minute Book (Pages 1 to 51, inclusive) Arizona Clarence Saunders Stores, Inc.

Counsel for Defendant, A. E. Sanders, now moves to strike portions of Government's Exhibit No. 22, referring to Kansas Corporation.

Counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, concurs in said Motion, and further moves to strike all of Government's Exhibit No. 22, and

IT IS ORDERED that said Motions be denied, to which ruling and Order of the Court, counsel for said Defendants except.

And thereupon, at the hour of 4:32 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued [95] to the hour of ten o'clock, A. M., Friday, November 9, 1934, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused. [96]

Minute Entry of
FRIDAY, NOVEMBER 9, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

Whereupon, F. E. Flynn, Esquire, Assistant United States Attorney moves to invoke the Rule as to witnesses George Erhardt and G. C. Partee. Said motion is granted and said witnesses are now duly sworn, admonished and instructed by the Court, and excluded from the Court Room.

The following Government's witnesses, heretofore sworn, are called and examined:

Tom H. Brandt

G. C. Partee

Tom H. Brandt, heretofore sworn, is now recalled and further examined on behalf of the Government.

And thereupon, at the hour of 11:57 o'clock, A. M., IT IS ORDERED that the further trial of this case be continued to the hour of 2:03 o'clock, P. M., this date, to which time the Jury, and alternate

Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 2:03 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows: [97]

GOVERNMENT'S CASE CONTINUED:

Tom H. Brandt, heretofore sworn, is now recalled and further examined on behalf of the Government.

George J. Erhardt, heretofore sworn, is now called and examined on behalf of the Government.

Tom H. Brandt, heretofore sworn, is now recalled and further examined on behalf of the Government.

And thereupon, at the hour of 3:01 o'clock, P. M., **IT IS ORDERED** that the further trial of this case be continued to the hour of 3:17 o'clock, P. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 3:17 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

Tom H. Brandt, heretofore sworn, is now recalled and further examined on behalf of the Government.

The following Government's witnesses, heretofore sworn, are called and examined:

Margaret Romley
Addie Driscoll.

The following Government's Exhibits are admitted in evidence:

43. Letter dated April 9, 1930, to Addie Driscoll, signed Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary; and envelope attached.

44. Letter dated June 18, 1929, to Addie Driscoll, signed, Arizona Clarence Saunders Stores, Inc., by M. Loveland, Secretary to Manager.

45. Letter dated July 16, 1929, to Addie Driscoll, signed, Arizona Clarence Saunders Stores, Inc., A. E. Saunders, President. [98]

46. Letter dated October 2, 1929, to Addie Driscoll, signed, Arizona Clarence Saunders Stores, Inc., by E. B. Horne, Secretary.

47. Letter dated October 11, 1929, to Addie Driscoll, signed, Arizona Clarence Saunders Stores, Inc., by M. Loveland, Secretary to Manager; and envelope attached.

48. Letter dated November 26, 1929, to Dear Stockholder, signed, A. E. Sanders, President Arizona Clarence Saunders Stores, Inc., and envelope attached.

49. Letter dated December 9, 1929, to Dear Stockholder, signed, A. E. Sanders, President, Arizona Clarence Saunders Stores, Inc., notice and envelope attached.

50. Letter dated April 3, 1930, to Dear Stockholder, signed, United Clarence Saunders Stores, Inc., by A. E. Sanders, President.

51. Letter dated July 1, 1930, to Dear Stockholder, signed, United Clarence Saunders Stores, Inc., by A. E. Sanders, President, and envelope attached.

52. Letter dated July 21, 1930, to Dear Stockholder, signed, United Clarence Saunders Stores, Inc., H. C. Van Atta, Vice-President, and envelope attached.

53. Letter dated September 29, 1930, to Dear Stockholders, notice and envelope attached.

And thereupon, at the hour of 4:35 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of ten o'clock, A. M., Tuesday, November 13, 1934, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Minute Entry of
TUESDAY, NOVEMBER 13, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

Addie Driscoll, heretofore sworn, is now recalled and further examined on behalf of the Government.

Government's Exhibit No. 54, Notice to Stockholders United Clarence Saunders Stores, Inc., dated October 6, 1930, and envelope attached, is now admitted in evidence.

Upon motion of F. E. Flynn, Esquire, Assistant United States Attorney,

IT IS ORDERED that J. M. Nixon, heretofore sworn, admonished, instructed and placed under the Rule by the Court, be excused subject to call.

It being represented to the Court by F. E. Flynn, Esquire, Assistant United States Attorney, that witness Oliver Fry has failed to attend pursuant to Subpoena heretofore issued October 26, 1934,

IT IS ORDERED that a Bench Warrant be issued forthwith citing said witness to show cause why he should not be punished for contempt of Court.

The following Government's Exhibits are admitted in evidence: [100]

56. Letter to Stockholders of United Sanders Stores, Inc., signed United Sanders Stores, Inc., H. D. Sanders, President, by G. C. Partee, Secretary-Treasurer, Notice, Form of Proxy and envelope attached.

59. Letter dated December 21, 1929 to Addie Driscoll, signed, Arizona Clarence Saunders Stores, Inc., Tom H. Brandt, Controller.

F. E. Flynn, Esquire, Assistant United States Attorney, now reads portions of Government's Exhibits 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53, to the Jury.

Counsel for said Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, now moves to strike Government's Exhibit No. 53, and

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, counsel for said Defendants except.

F. E. Flynn, Esquire, Assistant United States Attorney, now reads portions of Government's Exhibit No. 54, to the Jury.

Counsel for said Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, now moves to strike said Government's Exhibit No. 54, and

IT IS ORDEEED that said Motion be denied, to which ruling and Order of the Court, counsel for said Defendants except.

F. E. Flynn, Esquire, Assistant United States Attorney, now reads portions of Government's Exhibits 56, 59 and 43, to the Jury.

Addie Driscoll, heretofore sworn, is now recalled and further examined on behalf of the Government.

And thereupon, at the hour of 11:36 o'clock, A. M., IT IS ORDERED that the further trial of this case be continued to the hour of 11:45 o'clock, A. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 11:45 o'clock, A. M., the Jury and all members thereof, the alternate Juror, the defendants [101] and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

Government's Exhibit No. 60, Applications for registration of Agent to sell Securities, is now admitted and portions thereof read in evidence by

F. E. Flynn, Esquire, Assistant United States Attorney.

Whereupon, respective counsel stipulate that Government's Exhibit No. 60 is part of the records of the Corporation Commission of the State of Arizona.

And thereupon, at the hour of 11:58 o'clock, A. M., **IT IS ORDERED** that the further trial of this case be continued to the hour of 2:08 o'clock, P. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 2:08 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

Minor Bishop, heretofore sworn, is now called and examined on behalf of the Government.

The following Government's Exhibits are admitted and portions thereof read in evidence:

61. Copy of Subscription Agreement No. 5583, \$15.00, dated August 7, 1930, signed Agnes M. Bishop, copy of subscription agreement No. 5584, \$1500.00, dated August 7, 1930, signed, Minor A. Bishop, excepting signatures in lower left hand corner thereof, and notation on back.

62. Letter to Minor A. Bishop, dated August 11, 1930, signed Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary, excepting notation in ink on upper right side of said Letter.

[102]

63. Letter to Minor A. Bishop, dated August 12, 1930, signed, Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary.

64. Letter to Stockholders of United Sanders Stores, Inc., dated January 10, 1931, with Statement of Assets and Liabilities, dated December 31, 1930, attached.

John Muldoon, heretofore sworn, is now called and examined on behalf of the Government.

Government's Exhibit No. 65, Copy of Subscription Agreement No. 5727, in the sum of \$4200.00, dated May 22, 1930, signed, John Muldoon; copy of Subscription Agreement No. 5985, dated July 29, 1930, in the sum of \$3,000.00, signed, John Muldoon, and Copy of Subscription Agreement No. 5989, dated August 6, 1930, in the sum of \$3,000.00, signed John Muldoon, is now admitted and portions thereof read in evidence.

And thereupon, at the hour of 3:21 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of 3:40 o'clock, P. M., this date, to which time the Jury, and alternate

Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 3:40 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

John Muldoon, heretofore sworn, is now recalled and further examined on behalf of the Government.

The following Government's Exhibits are admitted and portions thereof are read in evidence:

66. Letter to John Muldoon, dated July 31, 1930, signed, Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary.

67. Certificate of Stock, No. 1914, to John Muldoon, [103] for 400 shares Common Stock United Clarence Saunders Stores, Inc., and Certificate of Stock, No. 1978, to John Muldoon, for 400 shares Common Stock United Clarence Saunders Stores, Inc., and Certificate of Stock, No. 2007, to John Muldoon, for 267 shares Common Stock United Clarence Saunders Stores, Inc.

W. R. Montgomery is now duly sworn and examined on behalf of the Government.

Oscar Schmidt, heretofore sworn, is now called and examined on behalf of the Government.

The following Government's Exhibits are admitted and portions thereof read in evidence:

70. Letter dated March 14, 1929, to Oscar or Hattie Schmidt, signed, Arizona Clarence Saunders Stores, Inc., by M. Loveland, Secretary to Manager.

71. Letter dated July 13, 1929 to Oscar Schmidt, signed, Arizona Clarence Saunders Stores, Inc., by M. Loveland, Secretary to Manager.

72. Letter dated January 31, 1931, to Oscar Schmidt, signed, United Sanders Stores, Inc., G. C. Partee, Sec. and Treas.

Counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, now moves to strike Government's Exhibit No. 72, and

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, counsel for said Defendants except.

Katherine Ryan, heretofore sworn, is now called and examined on behalf of the Government.

The following Government's Exhibits are admitted and read in evidence:

73. Receipt to Catherine Ryan, dated July 21, 1930, for \$300.00, signed, Bond and Mortgage Corporation, Chas. Greenbaum.

74. Letter dated July 22, 1930 to Catherine Ryan, signed Bond & Mortgage Corporation, by M. Loveland E. F. Assistant Secretary.

Government's Exhibit No. 75, letter dated July 10, 1929, [104] to Mrs. Catherine Ryan, signed, Arizona Clarence Saunders Stores, Inc., E. B. Horne, Secretary, is now admitted and a portion thereof read in evidence.

Upon motion of Duane Bird, Esquire,

IT IS ORDERED that Defendant, A. E. Sanders, be allowed to withdraw his Plea of Not Guilty heretofore entered herein, and enter plea of nolo cotendere.

And thereupon, at the hour of 4:40 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of ten o'clock, A. M., Wednesday, November 14, 1934, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused. [105]

Minute Entry of

WEDNESDAY, NOVEMBER 14, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants and all counsel are present,

pursuant to recess, and further proceedings of trial are had as follows:

Upon motion of John P. Dougherty, Esquire, Assistant United States Attorney, A. E. Sanders is now duly sworn, admonished, instructed, placed under the Rule, and excluded from the Court Room.

GOVERNMENT'S CASE CONTINUED:

W. R. Montgomery, heretofore sworn, is now recalled and further examined on behalf of the Government.

Government's Exhibit No. 76, Letter dated July 2, 1929 to Valley Bank, signed, A. E. Sanders, President; E. B. Horne, Secretary; Warfield Ryly, Gen'l Manager; Willis M. Dent, Cashier; M. V. Lee, Cashier; E. A. Lassale, Assistant Manager, is now admitted and read in evidence.

The following Government's Exhibits are admitted in evidence:

68. Ledger Sheet, Arizona Clarence Saunders Stores, Dividend Account.

69. 2 Ledger Sheets, Arizona Clarence Saunders, Inc., Dividend Acct. 305 S. 2 Ave., City, in account with The Valley Bank, Phoenix, Arizona.

Counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, now moves to Strike Government's [106] Exhibits Numbers 68, 69 and 76, and

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, the said Defendants except.

J. M. Nixon, heretofore sworn, is now recalled and further examined on behalf of the Government.

Oliver Fry is now duly sworn and examined on behalf of the Government.

Government's Exhibit No. 77, Letter dated January 12, 1929, to Oliver Frye, signed Arizona Clarence Saunders Stores, Inc., G. B. Greenbaum, Financial Manager, and envelope attached excluding notations on back of Letter, is now admitted and a portion thereof read in evidence.

Mrs. J. O. Parsons, heretofore sworn, is now called and examined on behalf of the Government.

The following Government's Exhibits are admitted in evidence:

78. Check dated May 27, 1930, to the Order of Bond and Mortgage Corporation for \$223.63, signed, Mrs. J. O. Parsons.

79. Letter dated November 26, 1929, to Dear Stockholder, signed, A. E. Sanders, President, Arizona Clarence Saunders Stores, Inc., and envelope attached.

Government's Exhibit No. 80, Letter dated May 29, 1930, to Mrs. John O. Parsons, signed, Bond and Mortgage Corporation, by M. Loveland, is now admitted and read in evidence.

John Charon, heretofore sworn, is now called and examined on behalf of the Government.

Government's Exhibit No. 81, Letter dated July 13, 1929, Mr. and/or Mrs. John Charon, signed, Arizona Clarence Saunders Stores, Inc., E. B. Horne, Secretary, is now admitted and read in evidence.

Tom H. Brandt, heretofore sworn, is now recalled and further examined on behalf of the Government. [107]

Government's Exhibit No. 82, Check No. 4517, dated November 19, 1929, to the Order of Greenbaum Brothers, for \$1025.00, signed, Tom H. Brandt, A. E. Sanders, office copy of said check and Statement, is now admitted in evidence.

Counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, now moves to strike Government's Exhibit No. 82, and

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, said Defendants except.

Government's Exhibit No. 40, Financial Statement, United Clarence Saunders Stores, Inc., dated December 31, 1929, is now admitted in evidence.

And thereupon, at the hour of 12:02 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of 2:06 o'clock, P. M., this date, to which time the Jury, and alternate

Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 2:06 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

Margaret Romley, heretofore sworn, is now recalled and further examined on behalf of the Government.

The following Government's Exhibits are admitted and portions thereof read in evidence.

83. Letters dated August 29, 1929, to Dear Stockholder, signed, Arizona Clarence Saunders Stores, Inc., by A. E. Sanders, President.

84. Letter dated September 16, 1929, to Dear Stockholder, signed, Arizona Clarence Saunders Stores, Inc., by A. E. Sanders, President.

Samuel W. Hamilton is now duly sworn and examined on behalf of the Government. [108]

The following Government's Exhibits are admitted in evidence:

85. Letterhead, Financial Department, Arizona Clarence Saunders Stores, Inc.

86. Letterhead, Bond and Mortgage Corporation.

87. Form of 8% Gold Debentures, United Clarence Saunders Stores, Inc.

Counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, now moves to strike Government's Exhibit No. 87, and

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, said Defendants except.

A. E. Sanders, heretofore sworn, is now called and examined on behalf of the Government.

And thereupon, at the hour of 3:11 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of 3:22 o'clock, P. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 3:22 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

A. E. Sanders, heretofore sworn, is now recalled and further examined on behalf of the Government.

L. D. Null is now duly sworn and examined on behalf of the Government.

And thereupon, at the hour of 4:30 o'clock, P. M., IT IS ORDERED that the further trial of this

case be continued to the hour of 9:30 o'clock, A. M., Thursday, November 15, 1934, to which time the defendants and counsel are excused.

Whereupon, the Jury, and alternate Juror, being first duly admonished by the Court, are excused until the hour of ten o'clock, A. M., Thursday, November 15, 1934. [109]

Minute Entry of
THURSDAY, NOVEMBER 15, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants and all counsel are present pursuant to recess and further proceedings of trial are had as follows:

It being represented to the Court by F. E. Flynn, Esquire, Assistant United States Attorney, that it was necessary for the witness, John Muldoon, to travel from Seligman, Arizona, to Phoenix, Arizona, in advance of date fixed for the trial of this case, to consult with counsel for the Government,

IT IS ORDERED that the Clerk pay to said witness, fees for mileage from Seligman, Arizona, to Phoenix, Arizona, and return.

Upon motion of Theodore Rein, Esquire,

IT IS ORDERED that counsel for Defendants be allowed to withdraw Government's Exhibit No. 88 for identification, for the purpose of making examination of said exhibit.

And thereupon, at the hour of 11:04 o'clock, A. M., IT IS ORDERED that the further trial of this case be continued to the hour of 2:01 o'clock, P. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 2:01 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants [110] and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

Theodore Rein, Esquire, now moves for additional time within which to examine Government's Exhibit No. 88 for identification, and

IT IS ORDERED that said Motion be granted, and that counsel for defendants be allowed until ten o'clock, A. M., Friday, November 16, 1934, within which to examine said exhibit.

And thereupon, at the hour of 2:05 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of ten o'clock, A. M., Friday, November 16, 1934, to which time the Jury, and alternate Juror, being first duly admonished

by the Court, the defendants and counsel are excused. [111]

Minute Entry of
FRIDAY, NOVEMBER 16, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

L. D. Null, heretofore sworn, is now recalled and further examined on behalf of the Government.

Government's Exhibit No. 89, Profit and Loss Statement, United Sanders Stores, Inc., Year 1929, is now admitted and read in evidence.

Theodore Rein, Esquire, now moves to strike Government's Exhibit No. 89, and

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, counsel for Defendants except.

The following Government's Exhibits are admitted and read in evidence:

90. Profit and Loss Statement, United Sanders Stores, Inc., Nine Months ended September 30, 1930.

91. Balance Sheet, United Sanders Stores, Inc., dated September 30, 1930.

Theodore Rein, Esquire, now moves to Strike Government's Exhibit No. 90, and

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, counsel for Defendants except.

Theodore Rein, Esquire, now moves to Strike Government's Exhibit No. 91, and [112]

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, counsel for Defendants except.

And thereupon, at the hour of 11:59 o'clock, A. M., IT IS ORDERED that the further trial of this case be continued to the hour of 2:02 o'clock, P. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 2:02 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

L. D. Null heretofore sworn, is now recalled and further examined on behalf of the Government.

And thereupon, at the hour of 3:15 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of 3:34 o'clock, P. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 3:34 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

The following Government's witnesses, heretofore sworn, are recalled and further examined:

L. D. Null

Tom H. Brandt.

The following Government's Exhibits are admitted and read in evidence:

94. Letter dated June 18, 1930, to United Clarence Saunders Stores, Inc., signed, Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary. [113]

95. Letter dated June 17, 1930, to United Clarence Saunders Stores, Inc., signed, Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary.

Government's Exhibit No. 96, Ledger Sheet, Capital Stock Ledger, William Bianconi, is now admitted in evidence.

The following Government's Exhibits are admitted and read in evidence:

97. Letter dated July 1, 1930, to United Clarence Saunders Stores, Inc., signed, Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary.

98. Letter dated July 2, 1930, to United Clarence Saunders Stores, Inc., signed, Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary.

Upon motion of Lawrence L. Howe, Esquire,

IT IS ORDERED that said counsel be allowed to withdraw Government's Exhibit No. 88, for identification, and said exhibit to be returned November 20, 1934.

And thereupon, at the hour of 4:45 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of ten o'clock, A. M., Tuesday, November 20, 1934, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused. [114]

Minute Entry of

TUESDAY, NOVEMBER 20, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

Tom H. Brandt, heretofore sworn, is now recalled and further examined on behalf of the Government.

The following Government's Exhibits are admitted and read in evidence:

99. Letter dated July 14, 1930, to United Clarence Saunders Stores, Inc., signed, Bond and Mortgage Corporation, by M. Loveland, Asst. Secretary, excluding Notations in ink.

100. Letter dated July 21, 1930, to United Clarence Saunders Stores, Inc., signed, Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary, excluding notations in ink.

101. Letter dated July 22, 1930, to United Clarence Saunders Stores, Inc., signed, Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary, excluding notation in ink.

The following Government's exhibits are admitted in evidence:

102. Letter dated July 23, 1930, to United Clarence Saunders Stores, Inc., signed, Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary, excluding notations in ink. [115]

103. Letter dated July 26, 1930, to United Clarence Saunders Stores, Inc., signed, Bond and Mortgage Corporation, by M. Loveland, Asst. Secretary, excluding notations in pencil.

G. C. Partee, heretofore sworn, is now recalled and further examined on behalf of the Government.

Government's Exhibit No. 105, Letter dated November 4, 1930, to United Clarence Saunders, Stores, Inc., signed Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary, excluding notations in ink, is now admitted in evidence.

Government's Exhibit No. 106, Letter dated November 10, 1930, to United Clarence Saunders Stores, Inc., signed, Bond and Mortgage Corporation, by M. Loveland, Assistant Secretary, excluding notations in ink, is now admitted and read in evidence.

Government's Exhibit No. 104, Nine (9) Ledger Sheets, Capital Stock Ledger, Account Bond & Mortgage Corp., is now admitted in evidence.

Tom H. Brandt, heretofore sworn, is now recalled and further examined on behalf of the Government.

Government's Exhibit No. 107, Two (2) Ledger Sheets, Capital Stock Ledger, Account Greenbaum Bros., is now admitted in evidence.

And thereupon, at the hour of 11:50 o'clock, A. M., the Jury, and alternate Juror, being first duly admonished by the Court, are excused to the hour of 2:00 o'clock, P. M., this date.

Whereupon, in the absence of the Jury, argument is now had by respective counsel upon the admissibility of Defendants' Exhibit "E," Statement of Tom H. Brandt, dated August 11, 1930. [116]

And thereupon, at the hour of 11:54 o'clock, A. M., IT IS ORDERED that the further trial of this case be continued to the hour of 2:03 o'clock, P. M., this date, to which time the defendants and counsel are excused.

Subsequently, at the hour of 2:03 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the Defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

Tom H. Brandt, heretofore sworn, is now recalled and further examined on behalf of the Government.

And thereupon, at the hour of 2:10 o'clock, P. M., the Jury, and alternate Juror, being first duly admonished by the Court, are excused subject to call.

Whereupon, in the absence of the Jury, further argument is now had by respective counsel upon the admissibility of Defendants' Exhibit "E", Statement of Tom H. Brandt, dated August 11, 1930.

Subsequently, at the hour of 2:24 o'clock, P. M., the Jury and all members thereof, and alternate Juror, return into open Court.

And thereupon, at the hour of 2:39 o'clock, P. M., the Jury, and alternate Juror, being first duly admonished by the Court, are excused subject to call.

Whereupon, in the absence of the Jury, Lawrence L. Howe, Esquire, makes a statement of matters defendants propose to prove by admission of Defendants' Exhibit "E", Statement of Tom H. Brandt, dated August 11, 1930, and by further examination of witness, Tom H. Brandt.

And thereupon, at the hour of 2:49 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued [117] to the hour of 3:13 o'clock, P. M., this date, to which time the defendants and counsel are excused.

Subsequently, at the hour of 3:13 o'clock, P. M., the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

And thereupon, at the hour of 3:15 o'clock, P. M., the Jury and all members thereof, and alternate Juror, return into open Court.

GOVERNMENT'S CASE CONTINUED:

The following witnesses, heretofore sworn, are now recalled and further cross examined on behalf of the Defendants:

Tom H. Brandt

L. D. Null.

Roy N. Davidson is now duly sworn and examined on behalf of the Government.

A. E. Sanders, heretofore sworn, is now recalled and further examined on behalf of the Government.

Whereupon, counsel for Defendants object to the introduction of Income Tax Returns of Sanders Stores, and the Court directs Mr. Davidson, Internal Revenue Collector for this District, to disclose the record, and that Mr. Davidson's objection to producing and disclosing the record under the regulations of the Department, be overruled.

And thereupon, at the hour of 4:10 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of ten o'clock, A. M., Wednesday, November 21, 1934, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused. [118]

Minute Entry of
WEDNESDAY, NOVEMBER 21, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

GOVERNMENT'S CASE CONTINUED:

Roy N. Davidson, heretofore sworn, is now recalled and further examined on behalf of the Government.

Government's Exhibit No. 108, Telegram dated November 21, 1934, to Acting Collector of Internal Revenue, Phoenix, Arizona, signed, Helvering Commr., is now admitted in evidence.

The following Government's Exhibits are admitted and read in evidence.

109. Treasury Department, U. S. Internal Revenue Form 649, Income Tax, Ariz. Clarence Saunders Stores, Tucson, Arizona, 1928 and 1929.

110. Treasury Department, U. S. Internal Revenue, Form 649, Income Tax United Sanders Stores, Inc., Years 1930, 1931 and 1932.

IT IS ORDERED that Government's Exhibits Numbers 109 and 110, be allowed to be withdrawn, and that certified copies be substituted in lieu thereof.

Theodore Rein, Esquire, now moves to strike Govern- [119] ment's Exhibits 109 and 110, and

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, the Defendants except.

Whereupon, the Government rests.

And thereupon, at the hour of 11:27 o'clock, A.M., IT IS ORDERED that the further trial of this

case be continued to the hour of ten o'clock, A. M., Thursday, November 22, 1934, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused. [120]

Minute Entry of
THURSDAY, NOVEMBER 22, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

And thereupon, at the hour of 10:09 o'clock, A. M., the Jury, and alternate Juror, being first duly admonished by the Court, are excused subject to call.

Whereupon, in the absence of the Jury, Theodore Rein, Esquire, moves to Strike Government's Exhibits 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 44, 45, 83, 84, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56, and to strike all testimony regarding Government's Exhibits 4, 5, 6, and 8.

Subsequently, at the hour of 10:43 o'clock, A. M., the Jury and all members thereof, and alternate Juror, return into open Court.

And thereupon, at the hour of 10:45 o'clock, A. M., the Jury, and alternate Juror, being first duly admonished by the Court, are excused to the hour of 2:00 o'clock, P. M., this date.

Whereupon, in the absence of the Jury, Theodore Rein, Esquire, now moves to strike Government's Exhibits Numbers 59, 43, 77, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, [121] 74, 75, 76, 78, 79, 80, 81, 82, 85, 86, 87, 89, 90, 91, 23, 24, 27, 28, 29, 30, 31, 22, 106, 105, 103, 102, 101, 100, 99, 98, 97, 94, 95, 109, 110, and 108.

And thereupon, at the hour of 11:45 o'clock, A. M., IT IS ORDERED that the further trial of this case be continued to the hour of 2:04 o'clock, P. M., this date, to which time the defendants and counsel are excused.

Subsequently, at the hour of 2:04 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the Defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

And thereupon, at the hour of 2:06 o'clock, P. M., the Jury, and alternate Juror, being first duly admonished by the Court, are excused subject to call.

Whereupon, in the absence of the Jury, further argument is had by respective counsel on Defendant's Motion to Strike certain Exhibits.

L. B. Whitney, Esquire, now moves for a Directed Verdict in favor of Defendants Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, and argument thereon is now had by said counsel.

Subsequently, at the hour of 3:08 o'clock, P. M., the Jury and all members thereof, and alternate Juror, return into open Court.

And thereupon, at the hour of 3:09 o'clock, P. M., the Jury, and alternate Juror, being first duly admonished by the Court, are excused to the hour of ten o'clock, A. M., Friday, November 23, 1934.

Whereupon, in the absence of the Jury, further argument is now had by Theodore Rein, Esquire, on said Defendants' Motion for Directed Verdict.
[122]

And thereupon, at the hour of 3:36 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of 3:57 o'clock, P. M., this date, to which time the defendants and counsel are excused.

Subsequently, at the hour of 3:57 o'clock, P. M., the Defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

Whereupon, in the absence of the Jury, further argument is now had by Theodore Rein, Esquire, and F. E. Flynn, Esquire, Assistant United States Attorney, on Defendants' Motion for Directed Verdict, and

IT IS ORDERED that Defendants' Motions to Strike Certain Exhibits and for Directed Verdict, be submitted and by the Court taken under advisement.

And thereupon, at the hour of 4:38 o'clock, P. M., IT IS ORDERED that the further trial of this case be continued to the hour of ten o'clock, A. M., Friday, November 23, 1934, to which time the defendants and counsel are excused. [123]

Minute Entry of
FRIDAY, NOVEMBER 23, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

Defendants' Motion to Strike certain Governments' Exhibits, having heretofore been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

IT IS ORDERED that Defendants' Motion to Strike Government's Exhibits Numbers 1, 2, 3, 4,

5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 44, 45, 83, 84, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 43, 77, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 85, 86, 87, 89, 90, 91, 23, 24, 27, 28, 29, 30, 31, 22, 106, 105, 103, 102, 101, 100, 99, 98, 97, 94, 95, 109, 110, and 108, be denied, and that an exception be entered on behalf of said Defendants.

Motion of Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, for Directed Verdict, having heretofore been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises, [124]

IT IS ORDERED that said Motion be denied, and that an exception be entered on behalf of said Defendants.

And the Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, rest.

Both sides rest.

Thereupon, Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, through their counsel, Alexander B. Baker, Esquire, renew Motion for Directed Verdict, and

IT IS ORDERED that said Motion be denied, to which ruling and Order of the Court, said Defendants except.

Upon motion of F. E. Flynn, Esquire, Assistant United States Attorney,

IT IS ORDERED that all witnesses heretofore subpoenaed in this case be excused from further attendance.

IT IS ORDERED that this case be continued for Judgment, as to Defendant, A. E. Sanders, to Tuesday, December 4, 1934, at the hour of ten o'clock, A. M.

And thereupon, at the hour of 10:40 o'clock, A. M., IT IS ORDERED that the further trial of this case be continued to the hour of 2:25 o'clock, P. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused.

Subsequently, at the hour of 2:25 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the defendants and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

All the evidence being in, the case is argued by John P. Dougherty, Esquire, Assistant United States Attorney, and Theodore Rein, Esquire, to the Jury. [125]

And thereupon, at the hour of 4:20 o'clock, P. M., IT IS ORDERED that further proceedings in this case be continued to Tuesday, November 27, 1934, at the hour of ten o'clock, A. M., to which time the Jury, and alternate Juror, being first duly admonished by the Court, the defendants and counsel are excused. [126]

Minute Entry of
TUESDAY, NOVEMBER 27, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the alternate Juror, the defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, and their counsel are present pursuant to recess, and further proceedings are had as follows:

Further argument to the Jury is now had by counsel for said Defendants.

And thereupon, at the hour of 11:58 o'clock, A. M., IT IS ORDERED that further proceedings herein be continued to the hour of 2:06 o'clock, P. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the said defendants and counsel are excused.

Subsequently, at the hour of 2:06 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

Further argument to the Jury is now had by counsel for said Defendants.

And thereupon, at the hour of 3:10 o'clock, P. M., IT IS ORDERED that further proceedings herein be continued to the hour of 3:30 o'clock, P. M., this date, to which time the Jury, and alternate Juror, being first duly admonished by the Court, the said defendants and counsel are excused.

Subsequently, at the hour of 3:30 o'clock, P. M., the Jury and all members thereof, the alternate Juror, the Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, and counsel for respective parties being present pursuant to recess, [127] further proceedings of trial are had as follows:

Argument is now had by F. E. Flynn, Esquire, Assistant United States Attorney, to the Jury. Whereupon, the Court duly instructs the Jury.

IT IS ORDERED that the Marshal provide meals and lodging for said Jury and their bailiff during the deliberation of this case at the expense of the United States.

Counsel for said Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, except to certain instructions given to the Jury.

Thereupon, IT IS ORDERED that alternate Juror, F. W. Griffen, be excused from further attendance upon this Court until Tuesday, December 4, 1934, at the hour of ten o'clock, A. M.

IT IS ORDERED that the verdict be sealed and delivered to the Clerk; that said Jury be excused

for the night, returning in a body into open Court at the hour of ten o'clock, A. M., Wednesday, November 28, 1934, providing said verdict is agreed upon by the hour of ten o'clock, P. M., this date.

IT IS FURTHER ORDERED that should said Jury fail to agree upon a verdict by the hour of ten o'clock, P. M., this date, that said Jury remain in charge of their bailiff for the night.

Thereupon, said Jury retire at the hour of 5:30 o'clock, P. M., in charge of sworn bailiff to consider of their verdict.

IT IS ORDERED that further proceedings herein be continued to the hour of ten o'clock, A. M., Wednesday, November 28, 1934, to which time the defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, and counsel are excused. [128]

Minute Entry of

WEDNESDAY, NOVEMBER 28, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

The Jury, and all members thereof, the Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, and all counsel are present

pursuant to recess, and further proceedings are had as follows:

The Jury are asked if they have agreed upon a verdict. Whereupon, the Foreman reports that they have agreed and presents sealed verdicts which are now opened by the Court in the presence of the Jury, and are as follows, to-wit:

C-4879—Phoenix

UNITED STATES OF AMERICA,

Plaintiff

Against

A. E. SANDERS,
H. D. SANDERS,
GUS B. GREENBAUM,
CHARLES GREENBAUM, and
WILLIAM GREENBAUM,

Defendants.

VERDICT

WE, THE JURY, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant, Gus B. Greenbaum, on the first count Guilty.

JOHN HAUSNER,
Foreman. [129]

C-4879—Phoenix

UNITED STATES OF AMERICA,

Plaintiff

Against

A. E. SANDERS,
 H. D. SANDERS,
 GUS B. GREENBAUM,
 CHARLES GREENBAUM, and
 WILLIAM GREENBAUM,

Defendants.

VERDICT

WE, THE JURY, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the Defendant, Charles Greenbaum, on the first count Guilty.

JOHN HAUSNER,
 Foreman.

C-4879—Phoenix

UNITED STATES OF AMERICA,

Plaintiff

Against

A. E. SANDERS,
 H. D. SANDERS,
 GUS B. GREENBAUM,
 CHARLES GREENBAUM, and
 WILLIAM GREENBAUM,

Defendants.

VERDICT

WE, THE JURY, duly empaneled and sworn in the above entitled action, upon our Oaths, do find

the Defendant, William Greenbaum, on the first county Guilty.

JOHN HAUSNER,
Foreman.

The verdicts are read as recorded and no poll being desired by either side, the Jury is discharged from the further consideration of this case, and until Tuesday, December 4, 1934, at the hour of ten o'clock, A. M.

Upon motion of L. B. Whitney, Esquire,

IT IS ORDERED that said Defendants be released upon their present bonds until Tuesday, December 4, 1934, at the hour of ten o'clock, A. M., and

IT IS FURTHER ORDERED that this case be set for Judgment and Sentence, Tuesday, December 4, 1934, at the hour of ten o'clock, A. M., as to Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum. [130]

[Title of Court and Cause.]

MOTION OF DEFENDANTS GREENBAUM
FOR A NEW TRIAL

COME NOW the defendants Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, by their attorneys Messrs. Baker & Whitney and Lawrence L. Howe, Esq., and Theodore E. Rein,

Esq., and jointly and severally move the Court to vacate and set aside the verdict returned and filed herein and to grant them and each of them a new trial in the above entitled cause upon the following grounds and for the following reasons:

(1) The Court erred during the trial of said cause in the decisions of questions of law arising during the course of said trial.

(2) The Court committed material error, calculated and tending to injure the rights of the said defendants and each of them in this case, by admitting incompetent, irrelevant, immaterial and hearsay evidence on the part of the United States of America over the objections of the defendants and each of them.

(3) The Court committed material error, calculated and tending to injure the rights of the said defendants and each of them, in excluding competent, material and relevant evidence offered by the defendants, and each of them, at the trial of said cause. [131]

(4) The Court erred in misdirecting the Jury as to the law of the case.

(5) The Court committed material error in rejecting the said defendants', and each of their motions to instruct the Jury to return a verdict of "Not Guilty" at the close of the United States of America's case.

(6) The Court committed material error in rejecting the said defendants', and each of their, motions to instruct the Jury to return a verdict of "Not Guilty" at the conclusion of the whole case.

(7) The Court erred in improperly refusing, to the prejudice of the rights of the defendants, and each of them, to give correct instructions requested by said defendants.

(8) The Court erred in restricting defendants, and each of them, the right to cross-examine the witness Tom Brandt.

(9) That there is a variance between the charge laid in the indictment and the proof.

(10) That the verdict is contrary to the law.

(11) That the verdict is contrary to the evidence.

(12) That the verdict is contrary to the law and the evidence.

WHEREFORE, these defendants, and each of them, pray that the Court vacate and set aside the verdict returned by the Jury and filed herein and that the Court grant the defendants, and each of them, a new trial of the said cause to the end that justice may be done and the rights of the said defendants, and each of them, be preserved.

Dated: at Phoenix, Arizona, this 1st day of December, 1934.

BAKER & WHITNEY
LAWRENCE L. HOWE
703 Luhrs Tower, Phoenix, Ariz.

THEODORE E. REIN
10 So LaSalle St., Chicago, Ill
Attorneys for Gus B., Charles and William Greenbaum. [132]

Received copy of the within instrument this 1st day of December 1934.

CLIFTON MATHEWS
United States District Attorney, Attorney for Plaintiff.

[Endorsed]: Filed DEC 1 1934 [133]

[Title of Court and Cause.]

MOTION IN ARREST OF JUDGMENT

NOW, after the verdict against the defendants Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, and each of them, and before sentence, comes the defendants Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, and each of them, by Baker & Whitney and Lawrence L. Howe, Esq., and Theodore E. Rein, Esq., their attorneys and move the Court here to arrest judgment herein and hold for naught the verdict of Guilty, rendered against them, the said defendants, and each of them, for the following reasons:

(1) That the said indictment was not presented and returned to the Court as provided by law, in that it was not presented to the Court in the presence of all of the members of the Grand Jury that found the same, one of said grand jurors, namely; H. J. Peterson, having been unlawfully excused by the foreman of said Grand Jury, and being not present in Court when said indictment was presented by the foreman of said grand jury to the Court. This motion is based on said grand jury report and the proceedings of said grand jury, as shown by the records of this Court. (Minute Entry of February 23, 1933.) [134]

(2) That the first count of the indictment herein fails to charge a crime and fails to set forth any facts which constitute an offense against any law or statute of the United States of America.

(3) That the scheme or artifice alleged, or attempted to be alleged in the first count of the indictment herein does not constitute a fraudulent scheme or artifice or indicate an intention or purpose to perpetrate a fraud.

(4) That no where in the first count of the indictment are facts and circumstances well and sufficiently pleaded which constitute a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises.

(5) That the indictment is not sufficient in form or substance to enable these defendants to plead

the judgment in bar of another prosecution for the same offense.

(6) That the first count of the indictment is vague, uncertain and indefinite and does not sufficiently state or aver, or set forth the alleged offense charged in said first count against these defendants, or either of them, or, the acts and facts constituting the same, to apprise said defendants, and each of them, of the crime or offense with which they, or either of them, therein stands charged.

(7) That the allegations contained in the positive and negative averments of the first count of the indictment are so contradictory, each of the other, as not to properly allege or describe a scheme or artifice to cheat or defraud.

(8) That the first count of the indictment is bad and duplicitous, in that it charges in a single count the commission of more than one offense, contrary to the provisions of Section 1024, Revised Statutes of the United States. [135]

(9) That in the first count of the indictment more than one separate and distinct offense is charged, in that separate and distinct scheme or artifices are attempted to be alleged.

(10) That there is no allegation in the first count of said indictment showing that these defendants, or either of them, had anything to do with the scheme or artifice of the defendant H. D. Sanders in organizing and incorporating under the

laws of the State of Arizona, the Piggly-Wiggy Holding Corporation, or the changing of the name of said corporation to the U-Save Holding Corporation, which was thereafter engaged in business in the City of Los Angeles, State of California.

(11) That there is no allegation in the first count of said indictment that these defendants, or either of them, had anything to do with the scheme or artifice relating to the U-Save Holding Corporation in acquiring a majority of the capital stock of the United Sanders Stores, Inc., nor with the scheme and artifice relating to the moving of certain merchandise of the value of more than \$100,000.00 from the warehouse of United Sanders Stores, Inc., of Phoenix, Tucson and Nogales, Arizona, to Los Angeles, California.

(12) That it cannot be ascertained from the first count of said indictment whether these defendants, or either of them, were at any time stockholders or directors, or officers of the corporations mentioned in said indictment, or either thereof.

(13) That in and by said first count of said indictment it appears that all of the defendants named therein could not be guilty of the offenses charged.

(14) That separate and distinct schemes, not capable of being united in the first count of the indictment, are improperly joined in said first count of the indictment. [136]

(15) That there is a misjoinder of offenses in the first count of said indictment.

(16) That there is a misjoinder of parties defendant in the first count of said indictment.

WHEREFORE, these defendants, and each of them, pray that said judgment be arrested and that no sentence or judgment be pronounced or rendered on the verdict.

Dated: At Phoenix, Arizona, this 1st day of December, 1934

BAKER & WHITNEY
LAWRENCE L. HOWE
703 Luhrs Tower, Phoenix, Ariz.

THEODORE E. REIN
10 So LaSalle St., Chicago, Ill
Attorneys for defendants Gus B. Greenbaum,
Charles Greenbaum and William Greenbaum.

Received copy of the within instrument this 1st day of December 1934

CLIFTON MATHEWS
United States District Attorney, Attorney for
Plaintiff.

[Endorsed]: Filed DEC 1 1934 [137]

Minute Entry of
TUESDAY, DECEMBER 4, 1934.

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding

[Title of Cause.]

F. E. Flynn, Esquire, Assistant United States Attorney, appears for the Government. The defendant, A. E. Sanders, is present in person, with his counsel, Duane Bird, Esquire, and the Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, are present in person, with their counsel, Messrs. Baker and Whitney, by L. B. Whitney, Esquire, this being the time heretofore fixed for judgment herein.

Motions of Defendants, Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, for New Trial and in Arrest of Judgment, are now presented to the Court.

Said motion for New Trial is now argued by said counsel for said Defendants, and

IT IS ORDERED that said Motions for New Trial and in Arrest of Judgment be denied, and that an exception be entered on behalf of said Defendants, Gus B. Greenbaum, Charles Greenbaum and William Greenbaum.

IT IS FURTHER ORDERED that this case be continued and reset for Judgment and Sentence Wednesday, December 5, 1934, at the hour of ten

o'clock, A. M., and that Bond on Appeal be fixed in the penal sum of Five Thousand Dollars (\$5,000.00) as to each defendant, Gus B. Greenbaum, Charles Greenbaum and William Greenbaum. [138]

Minute Entry of
WEDNESDAY, DECEMBER 5, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, Presiding

C-4879

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. E. SANDERS,
GUS B. GREENBAUM,
CHARLES GREENBAUM, and
WILLIAM GREENBAUM,

Defendants.

Clifton Mathews, Esquire, United States Attorney, and F. E. Flynn, Esquire, Assistant United States Attorney, appear as counsel for the Government. The Defendant, A. E. Sanders, is present in person with his counsel, Duane Bird, Esquire, and the Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, are present in person with their counsel, Messrs. Baker and

Whitney, by L. B. Whitney, Esquire, this being the time heretofore fixed for judgment herein.

Said defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, are now duly informed by the Court of the nature of the crime charged in Count one of the Indictment herein, to-wit: unlawfully and feloniously using the mails to defraud by having devised a scheme and artifice for obtaining money by means of false and fraudulent representations to procure said money unlawfully through correspondence by placing said correspondence in an envelope and depositing the same in a United States Post Office at Phoenix in the District of Arizona, for delivery as directed; committed on or about April 9, 1930, in violation of Section 338, Title 18, United States Code Annotated; of their arraignment on said charge, and of their pleas of Not Guilty thereto, and of their trial and [139] conviction thereof by jury, and no legal cause appearing why judgment should not now be imposed, the Court renders judgment as follows:

That the said defendants having been duly convicted of said crime, the Court now finds them Guilty thereof and as a punishment therefor, does now

ORDER, ADJUDGE AND DECREE that said defendant, Gus B. Greenbaum, be committed to the custody of The Attorney General of the United States or his authorized representative for imprisonment in a Penitentiary or other penal institution,

for the term of four (4) years, said term of imprisonment to date from December 11, 1934, and that he be fined the sum of One Thousand Dollars (\$1,000.00), said fine to be collected on execution, and does now further

ORDER, ADJUDGE AND DECREE that said defendant, Charles Greenbaum, be committed to the custody of The Attorney General of the United States or his authorized representative for imprisonment in a Penitentiary or other penal institution for the term of four (4) Years, said term of imprisonment to date from December 11, 1934, and that he be fined the sum of One Thousand Dollars (\$1,000.00), said fine to be collected on execution, and does now further

ORDER, ADJUDGE AND DECREE that said defendant, William Greenbaum, be committed to the custody of The Attorney General of the United States or his authorized representative for imprisonment in a Penitentiary or other penal institution, for the term of four (4) Years, said term of imprisonment to date from December 11, 1934, and that he be fined the sum of One Thousand Dollars (\$1,000.00), said fine to be collected on execution. [140]

Subsequently, IT IS ORDERED that the Judgment heretofore imposed herein be vacated, and the Court renders Judgment as follows:

That the said defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, hav-

ing been duly convicted of said crime, the Court now finds them Guilty thereof and as a punishment therefor and as a punishment therefor, does now

ORDER, ADJUDGE AND DECREE that said defendant, Gus B. Greenbaum, be committed to the custody of The Attorney General of the United States or his authorized representative for imprisonment in a Penitentiary or other penal institution, for the term of four (4) Years, said term of imprisonment to date from December 11, 1934, and that he pay the costs of prosecution, and does now further

ORDER, ADJUDGE AND DECREE that said defendant, Charles Greenbaum, be committed to the custody of The Attorney General of the United States or his authorized representative for imprisonment in a Penitentiary or other penal institution, for the term of four (4) years, said term of imprisonment to date from December 11, 1934, and that he pay the costs of prosecution, and does now further

ORDER, ADJUDGE AND DECREE that said defendant, William Greenbaum, be committed to the custody of The Attorney General of the United States or his authorized representative for imprisonment in a Penitentiary or other penal institution, for the term of four (4) years, said term of imprisonment to date from December 11, 1934, and that he pay the costs of prosecution,

Appeal Bond of each of the Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, are now presented to the Court by their counsel, Messrs. Baker and Whitney, by L. B. Whitney, Esquire, executed on the 5th day of December, [141] 1934, in the sum of Five Thousand Dollars (\$5,000.00), with Commercial Standard Insurance Company, a corporation, as surety thereon, and

IT IS ORDERED that said Bonds be and the same are hereby accepted and approved.

Duane Bird, Esquire, now presents Application for Probation as to Defendant, A. E. Sanders.

F. E. Flynn, Esquire, Assistant United States Attorney, represents to the Court that Postal Inspector would not oppose, but would recommend said application, and

IT IS ORDERED that said Application for Probation as to Defendant, A. E. Sanders, be granted; that imposition of Judgment be suspended, and that Defendant, A. E. Sanders be admitted to probation for the term of three (3) years from and after this date.

IT IS FURTHER ORDERED that said Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, be released on appeal bonds, heretofore approved.

L. B. Whitney, Esquire, now moves to exonerate Bail Bond of each of the Defendants, Gus B.

Greenbaum, Charles Greenbaum, and William Greenbaum, and

IT IS ORDERED that said Motion be granted.

C-4879

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. E. SANDERS,
GUS B. GREENBAUM, and
CHARLES GREENBAUM, and
WILLIAM GREENBAUM,

Defendants.

ORDER ADMITTING DEFENDANT
UPON PROBATION

On the 13th day of November, 1934, the Defendant, A. E. Sanders, in the above entitled action, entered a plea of *nolo contendere* to Count One of an Indictment charging him with [142] a violation of Section 338, Title 18, United States Code Annotated, unlawfully and *feloniously* using the mails to defraud by having devised a scheme and artifice for obtaining money by means of false and fraudulent representations to procure said money unlawfully through correspondence by placing said correspondence in an envelope and depositing the same in a United States Post Office, at Phoenix, in the District of Arizona, for delivery as directed,

committed on or about April 9, 1930. Subsequently, on the 5th day of December, 1934, an application was made for suspension of imposition of Judgment and to admit said defendant upon probation. It appearing to the Court that the ends of Justice and the best interests of the public, as well as the defendant, will be subserved, by admitting said defendant upon probation.

WHEREFORE, IT IS HEREBY ORDERED that the imposition of judgment and sentence be and the same is hereby suspended and the defendant is admitted to probation for the term of three (3) Years from and after this date.

The terms and conditions upon which this order is based are as follows: That the defendant do not violate any penal act or statute State or Federal during the period of probation and otherwise conduct himself as a lawabiding citizen. That the defendant remain within the District of Arizona and not depart therefrom without leave of this Court.

Will F. Murdoch, Post Office Building, Tucson, Arizona, is hereby appointed as probation officer in this case. That the defendant report immediately to said Will F. Murdoch and at such times and places thereafter as he may designate; that should the defendant violate the terms and conditions upon which this order is based that he be immediately re-arrested, brought before this Court, this order admitting him to probation vacated and judgment and sentence be thereupon pronounced against him. [143]

This case is continued from term to term to enable the Court to retain jurisdiction for the purpose of entering any further order that may become necessary.

DONE IN OPEN COURT this 5th day of December, 1934, At Phoenix, Arizona.

F. C. JACOBS.

Judge, United States District Court, for the District of Arizona. [144].

Minute Entry of
TUESDAY, DECEMBER 11, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, presiding

[Title of Cause.]

It appearing to the Court that many of the Exhibits that are necessary to be reviewed by the Circuit Court of Appeals to enable the Court to determine the questions presented on appeal in this case, are too voluminous and bulky to be incorporated in the Bills of Exceptions,

IT IS ORDERED that the Bill of Exceptions shall contain a reference to said exhibits, and a brief description thereof, and

IT IS FURTHER ORDERED that said exhibits be forwarded to the Clerk of the Circuit

Court of Appeals in their original form and filed with him as a part of the record of this case, to be available to and considered by the Circuit Court of Appeals in reviewing the record. [145]

Minute Entry of
WEDNESDAY, JANUARY 9, 1935.

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, presiding.

[Title of Cause.]

F. E. Flynn, Esquire, Assistant United States Attorney, appears for the Government.

Messrs. Baker and Whitney, by L. B. Whitney, Esquire, appear as counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum.

Upon motion of counsel for said Defendants, counsel for the Government consenting thereto,

IT IS ORDERED that the Order heretofore entered December 11, 1934, directing the Clerk to forward original exhibits upon appeal herein to the United States Circuit Court of Appeals, be and the same is hereby vacated, as to all exhibits excepting Government's Exhibit Number 14. [146]

[Title of Court and Cause.]

ORDER TO TRANSMIT ORIGINAL EXHIBIT

It is hereby ordered that the Clerk of the United States District Court for the District of Arizona transmit to the Circuit Court of Appeals for the Ninth Circuit Government's Exhibit 14, being application for permit made to the Arizona Corporation Commission, together with attached documents, in its original form as part of the record on appeal.

Dated Jan. 9th. 1934

F. C. JACOBS

United States District Judge, for the District of Arizona.

[Endorsed]: Filed JAN 9 1935 [147]

Minute Entry of
FRIDAY, DECEMBER 21, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, presiding

[Title of Cause.]

Upon motion of L. B. Whitney, Esquire, of counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum,

IT IS ORDERED that said Defendants be allowed thirty (30) days from the date of filing Notice

of Appeal, within which to prepare, serve and file Bill of Exceptions, as provided in Rule IX of the Rules of the Supreme Court of the United States, Rules of Practice and Procedure. [148]

[Title of Court and Cause.]

ORDER EXTENDING TIME OF DEFENDANTS-APPELLANTS WITHIN WHICH TO PREPARE, FILE AND SETTLE BILL OF EXCEPTIONS.

Upon Motion of Defendants-Appellants in the above entitled cause for an order extending time within which to prepare, file and settle Bill of Exceptions:

It appearing to the Court that Defendants-Appellants in accordance with Rule III of the Rules of Practice and Procedure in Criminal Cases, promulgated by the United States Supreme Court on May 7th, 1934, and effective September 1st, 1934, have duly taken their appeal on the 5th day of December, 1934, and it appearing to the Court that Defendants-Appellants are entitled to thirty days after the taking of the appeal to procure to be settled and filed with the Clerk of this Court their Bill of Exceptions, excluding Sundays and Legal Holidays, whether under Federal or State Law, as provided in Rule XIII of the Rules of the United States Supreme Court above mentioned; and it further appearing that there are six Sundays and Legal Holidays intervening;

NOW, THEREFORE, on consideration of the premises, it is ORDERED that the time within which the Defendant-Appellants shall procure to be settled and filed with the Clerk of this Court their Bill of Exceptions is hereby fixed at and extended to the 11th day of January, 1935 [149] which is thirty days after the taking of the appeal, excluding Sundays and Legal Holidays, whether under Federal Law or under the Law of the State of Arizona.

Dated at Phoenix, Arizona, this 22nd day of December, 1934.

F. C. JACOBS,
Judge. [150]

[Endorsed]: Filed DEC 22 1934 [151]

Minute Entry of
MONDAY, JANUARY 7, 1935.

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, presiding.

[Title of Cause.]

F. E. Flynn, Esquire, Assistant United States Attorney, appears for the Government. Messrs. Baker and Whitney, by L. B. Whitney, Esquire, appear as counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum.

Upon motion of L. B. Whitney, Esquire,

IT IS ORDERED that said counsel be allowed to sign proposed Bill of Exceptions heretofore filed herein. [152]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on the 23rd day of October, 1933, the above entitled cause came on for hearing on the separate motions of defendants, and each of them, duly made, to quash the indictment herein upon the ground that said indictment was not presented and returned to the court as provided by law, for the reason it was not presented to the court in the presence of all of the members of the Grand Jury that found the same, one of the grand jurors, H. J. Peterson, having been unlawfully excused by the foreman of said Grand Jury and being not present in court when said indictment was presented by the foreman of said Grand Jury to the Court, as shown by the Grand Jury Report made on February 28, 1933, which report abstracted to the issue, is as follows:

Come now the Grand Jury duly empaneled and sworn in this term of court, all members present except H. J. Peterson. Whereupon, their Foreman reports that he has excused said Grand Juror this date and it is ordered that the said H. J. Peterson be excused from being present at this report. There-

upon said Grand Jury by and through their foreman report that [153] they have found seventy-three true bills, (including the indictment in this cause) and that twelve or more of their number have concurred in the finding of said indictments.

The Court, on the 22nd day of November, 1933, denied the motion of each of said defendants to quash the indictment, to which ruling defendants, and each of them, then and there duly excepted.

Thereupon, and on the same date, to-wit, October 23, 1933, the cause came on for hearing on the separate demurrers of the defendants, and each of them, to the indictment, and thereafter, upon the 25th day of November, 1933, the Court entered an order sustaining the demurrers of defendants to Counts 2 to 17, inclusive, of the indictment, and overruled the demurrers of defendants, and each of them, to Count 1 of the indictment, to which ruling on Count 1, the defendants, and each of them, then and there duly excepted.

Thereafter, on the 7th day of November, 1934, the above cause came on for trial and a jury was duly and regularly empaneled and sworn, and the trial commenced on the said 7th day of November, 1934. Clifton Mathews, United States Attorney for the District of Arizona, and Frank E. Flynn and John Dougherty, Assistant United States Attorneys, appearing for the plaintiff, United States of America; and the defendant A. E. Sanders being present in person and being represented by his at-

torney, Duane Bird; and the defendants Gus B. Greenbaum, Charles Greenbaum and William Greenbaum being present in person and being represented by their attorneys Alexander B. Baker, Louis B. Whitney, Lawrence L. Howe and Theodore E. Rein, and the parties having announced ready for trial, John B. Ryan was thereupon duly sworn as shorthand reporter. [154]

Whereupon, the first count of the indictment having been read to the jury, the United States Attorney declined to make an opening statement of what the Government expected to prove, the defendants Gus B., Charles and William Greenbaum, and each of them, through their counsel, likewise declined to make an opening statement.

Thereupon, the defendants Gus B., Charles and William Greenbaum, through their counsel, duly objected to the introduction of any evidence upon the ground that the indictment failed to state an offense under Section 215 of the United States Penal Code, or under any other section of the United States Statutes, and that said indictment was duplicitous, vague and uncertain. The Court overruled the said objection, to which ruling the defendants Gus B., Charles and William Greenbaum then and there duly excepted.

Whereupon, United States of America, plaintiff, to sustain the issue on its part, called

J. E. JOHNSON

as a witness on behalf of the Government, and said J. E. Johnson testified as follows:

I am Assistant Secretary and Examiner of the Arizona Corporation Commission. I have with me certain instruments filed in the office of the Commission relating to Clarence Saunders Stores, Inc., an Arizona corporation.

Thereupon the Government offered in evidence the Articles of Incorporation, and three amendments to the Articles of Incorporation, of Clarence Saunders Stores, Inc., which were received in evidence and marked Government's Exhibits Nos. 1, 2, 3 and 4, respectively.

Exhibit 1, abstracted to the issue, is as follows:

Articles of Incorporation of Clarence Saunders Stores, Inc., dated and acknowledged October 18, 1928, filed with the Arizona Corporation Commission October 25, 1928, at the request [155] of Duane Bird, of Nogales, Arizona. Incorporators: A. E. Sanders and E. B. Horne, of Nogales, Arizona. Authorized Capital Stock: 15,000 shares preferred, par value \$100.00 each; 300,000 shares of common without nominal or par value. Provides for \$8.00 per share, or 8% per annum of the amount of par value; dividends on preferred stock "payable out of any and all surplus or net profits, quarterly, half-yearly, yearly, as and when declared

(Testimony of J. E. Johnson.)

by the Board of Directors, before any dividends shall be declared, set apart, or paid upon the common stock of the corporation". Dividends cumulative. Board of Directors: not less than 3 nor more than 7. Duane Bird of Nogales, Arizona, Statutory Agent. Business to be transacted: To carry on and engage in the business of establishing, maintaining and operating 'Clarence Saunders Sole Owner of My Name' Stores; and other mercantile business, with usual powers given to corporations.

Exhibit 2, abstracted to the issue, is as follows:

Certificate of Amendment to Articles of Incorporation, dated January 2, 1929; executed by A. E. Sanders, as President, and E. B. Horne, as Secretary, filed in the office of the Corporation Commission at the request of Duane Bird, of Nogales, Arizona, on January 11, 1929, amending Article II by changing the name of the corporation to "Arizona Clarence Saunders Stores, Inc."

Exhibit 3, abstracted to the issue, is as follows:

Certificate of Amentment to Articles of Incorporation of Arizona Clarence Saunders Stores, Inc., dated January 21, 1930, signed by A. E. Sanders, as President, and J. M. Nixon, as Secretary. Filed in the office of the Corporation Commission at the request of Baker & Whitney, of Phoenix, Arizona, on January 23,

(Testimony of J. E. Johnson.)

1930, amending Articles II, V and IX, changing the name of the corporation to "United Clarence Saunders Stores, Inc.; changing the capital stock set-up to 50,000 shares of preferred stock of the par value of \$100.00 each, and 500,000 shares of common stock without nominal or par value; and increasing the highest amount of indebtedness to which the corporation shall at any time subject itself to \$3,300,000.00. [156]

Exhibit 4, abstracted to the issue, is as follows:

Certificate of Amendment to Articles of Incorporation of United Clarence Saunders Stores, Inc., dated November 1, 1930, signed by H. D. Sanders, as President, and G. C. Partee, as Secretary. Filed in the office of the Corporation Commission on November 24, 1930, at the request of Baker & Whitney, Phoenix, Arizona, amending Article II, changing the name of the corporation to "United Sanders Stores, Inc."

The witness resumed: I have the corporate records of the Piggly-Wiggly Holding Corporation, the U-Save Holding Corporation, and the Bond and Mortgage Corporation.

Thereupon the Government offered in evidence the Articles of Incorporation of the Piggly-Wiggly Holding Corporation of Yuma, which was received in evidence and marked Government's Exhibit 5, which abstracted to the issue is as follows:

(Testimony of J. E. Johnson.)

Articles of Incorporation of Piggly-Wiggly Holding Corporation of Yuma, dated April 27, 1929, and filed in the office of the Arizona Corporation Commission on May 15, 1929, at the request of Wm. H. Westover, of Yuma, Arizona. Incorporators: H. D. Sanders and S. I. Haley, both of Yuma, Arizona. Authorized Capital Stock: 60,000 shares of Class A common and 60,000 shares of Class B common, both without nominal or par value, and 30,000 shares of preferred stock at \$100.00 each. Provides for 7% per annum dividends on preferred stock. Officers named in articles of incorporation: H. D. Sanders, President and Director; Philip Thorp, Vice-President and Director; S. I. Haley, Secretary-Treasurer and Director. Principal Business: To own and operate retail mercantile stores at such places as the company may deem proper, etc.

The Greenbaum defendants duly objected to the introduction of Government's Exhibit 5 because it was not shown to have any connection or relation with any of the Greenbaum defendants, and that it was hearsay, but the Court overruled said objection with the statement that he supposed the Government would connect it up later, to which ruling counsel for de- [157] fendants then and there duly excepted.

(Testimony of J. E. Johnson.)

Thereupon the Government offered a Certificate of Amendment of the Articles of Incorporation of the Piggly-Wiggly Holding Corporation of Yuma, which was received in evidence and marked Government's Exhibit 6, which abstracted to the issue, is as follows:

Certificate of Amendment of Articles of Incorporation of Piggly-Wiggly Holding Corporation of Yuma, dated February 19, 1930, filed in the office of the Arizona Corporation Commission at the request of Wm. H. Westover of Yuma, Arizona, on February 24, 1930. Certificate signed by H. D. Sanders and S. I. Haley. The purpose of certificate was to change the name of the corporation to "U-Save Holding Corporation".

The Greenbaum defendants duly objected to the receiving of said Exhibit in evidence because it had no connection or relation with any of the Greenbaum defendants, and that it was hearsay, but the Court overruled said objection, to which ruling counsel for defendants then and there duly excepted.

Thereupon the Government introduced in evidence Articles of Incorporation of Bond and Mortgage Corporation, marked Government's Exhibit 7, which abstracted to the issue, is as follows:

Articles of Incorporation of Bond & Mortgage Corporation, dated May 1, 1929, filed in

(Testimony of J. E. Johnson.)

the office of the Arizona Corporation Commission May 1, 1929, at the request of Baker & Whitney, Phoenix, Arizona. Incorporators: L. B. Whitney and Alexander B. Baker. Capital Stock: 1,000 shares without nominal or par value. Business of corporation: to deal in stocks, bonds, debentures, mortgages, etc.

Thereupon the Government offered in evidence the Articles of Incorporation of Piggly-Wiggly Southwestern Company, which was received in Evidence as Government's Exhibit 8, and which abstracted to the issue, is as follows:

Articles of Incorporation of Piggly-Wiggly Southwestern Company, dated July 9, 1927. Filed in the office of the Arizona Corporation [158] Commission July 13, 1927, at the request of Duane Bird, of Nogales, Arizona. Incorporators: A. E. Sanders and Leila Sanders, of Nogales, Arizona. Capital Stock: \$200,000.00, divided into 10,000 shares of common stock at \$10.00 par value, and 1,000 shares of preferred stock at \$100.00 par value. Business proposed to be transacted: To carry on and engage in the business of establishing, maintaining and operating "Piggly-Wiggly" stores; to deal in groceries, provisions, etc.

The Greenbaum defendants duly objected to the receiving of said Exhibit in evidence because there was nothing in connection with that company

(Testimony of J. E. Johnson.)

charged in the indictment, and for the further reason that the defendants Greenbaum were not shown to have had anything to do with said company, but the Court overruled said objection, to which ruling counsel for defendants then and there duly excepted.

Thereupon the Government introduced in evidence the annual report of the Arizona Clarence Saunders Stores, Inc., as of the close of business May 31, 1929, marked Government's Exhibit 9, which abstracted to the issue, is as follows:

Annual Report of Arizona Clarence Saunders Stores, Inc., at the close of business May 31, 1929, filed in the office of the Arizona Corporation Commission July 1, 1929, at the request of Arizona Clarence Saunders Stores, Inc., Post Office Box 2587, Tucson, Arizona. Executed and sworn to by A. E. Sanders, President, and E. B. Horne, Secretary, on June 29, 1929, at Nogales, Santa Cruz County, Arizona. This report shows:

(Testimony of J. E. Johnson.)

Assets	\$454,280.96
Liabilities	19,024.62
Accumulations	2,516.93
Amount of Capital Stock—	
Paid up and issued	432,739.41
Real Property at Tucson—	
7 stores, 1 warehouse	leased
Real Property at Phoenix—	
3 stores, 1 warehouse	leased
Personal Property: Phoenix and Tucson — fixtures and equip- ment	50,641.73
Merchandise Stocks	70,115.88

[159]

The defendants Greenbaum duly objected to the receiving of said annual report in evidence because they were not shown to have any connection with such annual report, and that it was hearsay, but the Court overruled said objection, to which ruling counsel for defendants Greenbaum then and there duly excepted.

Thereupon the Government offered in evidence the annual report of United Clarence Saunders Stores, Inc., as of May 31, 1930, marked Government's Exhibit 10, and which abstracted to the issue, is as follows:

(Testimony of J. E. Johnson.)

Annual Report of United Clarence Saunders Stores, Inc., at close of business May 31, 1930, filed in the office of the Arizona Corporation Commission June 30, 1930, at the request of the company, whose address is given at 305 South Second Avenue, Phoenix, Arizona. Report was sworn to and executed in Maricopa County, Arizona, by A. E. Sanders, as President, and J. M. Nixon, as Secretary, on June 25, 1930. Report shows:

Assets	\$1,125,101.14
Liabilities	158,687.26
Accumulations	296,603.88
Amount of Capital Stock Paid up and Issued	669,810.00
Real Property	None
Personal Property	518,089.55
Divided into fixtures and Equipment, Tucson and Phoenix Arizona	\$173,947.03
Merchandise Inventories at Phoenix and Tucson Ware- houses, and at Phoenix, Tuc- son, Prescott, Mesa and Benson Stores	344,142.52

The Greenbaum defendants duly objected to the receiving of said annual report in evidence because it was hearsay as to the Greenbaums, but the Court

(Testimony of J. E. Johnson.)

overruled said objection, to which ruling counsel for the defendants then and there duly excepted.

Thereupon the Government introduced in evidence two annual reports of the Bond and Mortgage Corporation, one [160] having been filed June 28, 1929, and the other June 28, 1930, marked Government's Exhibits 11 and 12, respectively. Exhibits 11 and 12 abstracted to the issue, are as follows:

Annual Report of Bond and Mortgage Corporation, dated, executed and sworn to June 26, 1929, by Wm. Greenbaum as President, and G. B. Greenbaum as Secretary, filed in the office of the Arizona Corporation Commission June 28, 1929, at the request of Baker & Whitney, Phoenix, Arizona. Report shows no business except organization and that in addition to the President and Secretary mentioned, Charles Greenbaum is Vice-President. The address of the office is given as 700 Security Building, Phoenix, Arizona.

Annual Report of Bond and Mortgage Corporation at close of business May 27, 1930. Executed and sworn to in Maricopa County, Arizona, by Wm. Greenbaum, as President, and G. B. Greenbaum, as Secretary, on June 30, 1930. Filed in the office of the Arizona Corporation Commission on June 30, 1930, at the request of Bond and Mortgage Corporation,

(Testimony of J. E. Johnson.)

whose address is given as Security Building, Phoenix, Arizona. Shows same officers as Exhibit 11, and the following:

Assets	\$77,939.17
Liabilities	71,362.25
Accumulations	18,724.77
Real Property	None
Personal Property: Securities	31,934.19
Furniture & Fixtures	1,090.25
Amount of Capital Stock	
Paid up and Issued	25,301.69

Thereupon the Government introduced in evidence the annual report of the U-Save Holding Corporation at the close of business as of June 30, 1930, marked Government's Exhibit 13, and which abstracted to the issue, is as follows:

Annual Report of U-Save Holding Corporation (formerly Piggly-Wiggly Holding Corporation) at the close of business June 30, 1930, executed and sworn to in Yuma County, Arizona, by H. D. Sanders, as President, and S. Idelle Haley, as Secretary, July 22, 1930; filed in the office of the Arizona Corporation Commission July 23, 1930, at the request of Piggly-

(Testimony of J. E. Johnson.)

Wiggly Yuma Co. Shows: [161]

Assets	\$956,662.59
Liabilities	9,915.47
Accumulations	504,767.22
Amount of Capital Stock	
Paid up and Issued	337,070.00
Stock contracts	104,910.00

Real Property Owned:

Situate—

Yuma, Ariz.	42,927.21
San Diego, Cal.	1,300.00
Somerton, Ariz.	5,000.00
El Centro, Calif.	21,179.68

Personal Property—Situate:

Yuma, Arizona: Stock, fixtures & merchandise	7,177.47
Warehouse equipment and merchandise	87,445.81
Piggly-Wiggly stock	130,695.00

Imperial, California.

Store: fixtures & merchandise 9,506.43

Officers, in addition to the President and Secretary, are given: Vice-Presidents, Philip H. Thorp and C. L. Patterson. The addresses of all the officers are given as Yuma, Arizona, except Philip H. Thorp, whose address is given as San Bernardino, California.

(Testimony of J. E. Johnson.)

The defendants Greenbaum duly objected to the receiving of said annual report in evidence because there was no connection shown between that company and the Greenbaums, as shown by the allegations in the indictment, but the Court overruled said objection, to which ruling counsel for the defendants then and there duly excepted.

Thereupon the Government introduced in evidence a file containing the application for permit made to the Arizona Corporation Commission, together with the permit, which was issued thereon, to the Clarence Saunders Stores, Inc., being Permit No. 6225, marked Government's Exhibit 14, and which abstracted to the issue is as follows:

Permit No. 6225, Investment Company No. 2383, issued by the Arizona Corporation Commission to Clarence Saunders Stores, Inc., stating that company has complied with the provisions of Title 9, Chapter 9, Revised Statutes of Arizona, 1913, Civil Code, and the amendments thereto, and "that detailed information in regard to the company and its security is on file in the [162] office of the Arizona Corporation Commission for public inspection and information, and that said company is permitted to do business in the State of Arizona;

Now, therefore, by virtue of the powers in it vested by the Constitution and the Laws of the State of Arizona, the Arizona Corporation Com-

(Testimony of J. E. Johnson.)

mission does hereby grant and give unto the said Clarence Saunders Stores, Inc., PERMISSION:

“To issue and sell 1,500 shares of its preferred capital stock at \$100.00 per share, and 50,000 shares of its no par common capital stock at \$1.00 per share.

IT IS ORDERED: That a commission of not to exceed 20% may be paid on such sale of stock.

IT IS FURTHER ORDERED: That the applicant be and the same is hereby authorized to issue 151,000 shares of no par common stock to Mr. A. E. Sanders in consideration of the transfer by him to the corporation of his license and franchise to operate ‘Clarence Saunders Sole Owner of My Name’ food stores in Arizona and New Mexico, except Eddy and Dona Ana Counties, and the agreement for the purchase of ‘Cashway Markets’ in Tucson, Arizona, as set forth in the application for this permit.

Permission to issue and sell securities hereunder expires June 30, 1929.”

The balance of this permit provides for the company mailing to the Commission a statement verified by its President or Secretary showing the number of shares sold, the rate at which sold, and the amount of money received therefor, together with an itemized report of all disbursements. It further provides that in no event shall securities be sold where less than 25% of the total purchase

(Testimony of J. E. Johnson.)

price is paid in cash, and that the remaining 75% be covered by a contract calling for the payment of definite sums at stated intervals not to exceed six months from the date of sale. It further provides that a copy of all advertising by and on behalf of the company shall be mailed to the Commission by midnight of the day such advertising is first published, and that a true copy of the permit be exhibited to each prospective subscriber or purchaser of securities authorized to be sold under the permit. It provides that every agent selling the securities mentioned in the permit must register with the Commission. The permit is dated December 26, 1928, and is given under the hand and seal of the Arizona Corporation Commission.

Application for Permit executed by A. E. Sanders and [163] E. B. Horne, and sworn to on December 15, 1928, at Nogales, Arizona. This application shows that a qualifying share of stock was issued to each of the following persons: A. E. Sanders, E. B. Horne, and Lelia Sanders, and that there was a balance unissued of 299,997 shares. The application provides in part:

“It is desired to issue 151,000 shares of no par common stock to Mr. A. E. Sanders in consideration of the transfer by him to the corporation of his license and franchise to operate ‘Clarence Saunders, Sole Owner of My Name’ food stores in Arizona and New Mexico, excepting Eddy and Dona

(Testimony of J. E. Johnson.)

Ana Counties, and the agreement for the purchase of 'Cashway Markets' in Tucson, Arizona."

Permission is sought by this application to pay a brokerage or commission of not to exceed 20% on sales of stock to the public at large. The application states that Mr. Sanders has been in the grocery business for more than twenty years and is president of Piggly-Wiggly Southwestern Co. "which is now successfully operating Piggly-Wiggly stores in Cochise and Santa Cruz Counties, Arizona, and that Mr. Horne has been associated in the management of the Piggly-Wiggly Southwestern Co. for six months, and had been previously engaged for eighteen years in the lumber business in Arkansas. The application also states that all correspondence in connection with the company should be addressed to Duane Bird, Attorney-at-Law, Nogales, Arizona.

This application has attached to it minutes of the meeting of Clarence Saunders Stores, Inc., held November 28, 1928, (The minutes do not show that any of the Greenbaum defendants were present). Attached also to the application is a copy of the agreement between A. E. Sanders and the Cashway Markets, Inc., and a copy of the contract for license to operate "Clarence Saunders, Sole Owner of My Name" food stores, between A. E. Sanders and Clarence Saunders Corporation, a Delaware Corporation, with its principal place of business at Memphis, Tenn.. which was executed on the 28th

(Testimony of J. E. Johnson.)

day of September, 1928, and acknowledged on the same day by both A. E. Sanders and Clarence Saunders as President of the Clarence Saunders Corporation. This contract provides in effect as follows:

Licensee agrees:

“To install such standard store equipment in detail in each store to be operated under this agreement as may be required by licensor the same to be purchased from Licensor at standard prices which shall be in effect at the time of shipment, except those items which the Licensor shall instruct to be purchased elsewhere by the Licensee. [164]

“To have placed in each store in the particular way and position as shall be directed by the Licensor a large sign of the dimensions as shall be designated by the Licensor, on which shall appear the trade-name “CLARENCE SAUNDERS, Sole Owner of My Name”, as prescribed by the Licensor.

“To not allow any other name or sign to appear in conjunction with the said trade-name or independently of it, either on the exterior of any store, inside of any store, or in any newspaper advertising, and to not refer in any public way whatsoever to any store operated under this agreement by any name or sign other than the said trade-name “CLARENCE SAUNDERS, Sole Owner of My Name,” * * *

“To not form any agreement or corporation, directly or indirectly, with any business competitive

(Testimony of J. E. Johnson.)

with that of the store or stores operated under this agreement, as to the retail prices of merchandise whether such agreement or combination be oral, written, or implied. * * *

“To make weekly reports to the Licensor of the sales of each Department of each store operated under this agreement, and to make such monthly or other reports relating to any phase of the business as may be required by the Licensor, and in making such reports to do so in such manner and on the forms as shall be prescribed by the Licensor.

“The Licensor shall have authority through any of its representatives at any time to inspect any store operated hereunder, including its merchandise, and shall have the further authority to inspect and audit the records of the Licensee and obtain therefrom such information and reports as may seem desirable to the Licensor.

“To pay the Licensor promptly, according to its terms of sale, for all merchandise and/or store equipment sold by it to the Licensee from time to time * * * .

“To have established and in operation one store under this agreement by January 1, 1929; one store every thirty days thereafter till twenty-five stores are established—entire twenty-five stores to be established by January 1, 1931, and to operate continuously the store or stores so specified for as long a time as this contract may be in full force and effect. * * *

(Testimony of J. E. Johnson.)

“The Licensee, in consideration of this agreement, shall pay to the Licensor a monthly license fee of one-half of one per cent on the gross sales of each department of each store operated under this agreement for so long a time as the said store shall be operated by the Licensee. The payment of said license fee shall be made not later than the 10th day of each month on the sales for the preceding month. * * * [165]

The Licensor agrees:

“To furnish the Licensee in accordance with the schedule named below:

“Plans and specifications for each store building; instructions as to all changes and the remodeling that shall be required in each instance; design for the color scheme to be put on each store front; design for the trade-name that shall be inscribed on show windows and on the walls of the building; a detailed list with a standard description of all fixtures that shall be required for each store, and a price of each item at which the Licensor will sell it to the Licensee; a floor plan showing the position of, and instructions for the installation of each store fixture; arrangement plan for the display of all merchandise; standard advertising copy that shall be used for the opening announcement of the first store that shall be established; advertising copy and instructions as to its use in the operation of the stores; a list describing the merchandise assort-

(Testimony of J. E. Johnson.)

ment that shall be handled by each department of a store; information as a guide for the purchasing of merchandise, how to assemble and distribute; instructions as to the means and methods that shall be used in accounting, and for keeping all necessary records in merchandising and store operation; instructions as to the standard rules and regulations that shall govern in the establishment, maintenance and operation of the stores, and instructions as to all other standard rules and regulations which are contemplated by this agreement."

(NOTE: This License agreement covers over six pages of typewritten legal-cap, single spaced, and has every proviso contained therein that the ingenuity of man could devise.) [166]

Thereupon the Government introduced in evidence Permit No. 6310, together with the application therefor, and the file of the Arizona Corporation Commission relating thereto, which was marked Government's Exhibit 15, and which abstracted to the issue, is as follows:

Arizona Corporation Commission amended Permit No. 6310, Investment Company No. 2383, issued to Arizona Clarence Saunders Stores, Inc., in same form as Permit No. 6225, granting the following permission:

"To issue and sell 10,000 shares of its preferred stock at \$100.00 per share, and 80,000 shares of its no par common stock at \$5.00 per share.

(Testimony of J. E. Johnson.)

IT IS ORDERED: That a commission of not to exceed 20% may be paid for the sale of the stock."

This permit is dated March 22, 1929, and expired June 30, 1929, and is under the hand and seal of the Arizona Corporation Commission. Attached to the permit is an application in the form of a letter from Duane Bird, Attorney at Law, Nogales, Arizona, dated March 19, 1929, addressed to the Arizona Corporation Commission, reading as follows:

"Kindly treat this letter as an application of the Arizona Clarence Saunders Stores, Inc. for a permit to issue ten thousand (10,000) shares of its preferred capital stock at \$100.00 per share, and eighty thousand (80,000) shares of its no-par common stock at \$5.00 per share. I am sending my check herewith in the sum of \$164.90 to cover your fee for this permit.

The application on file in connection with Permit No. 6225 contains all the information required by you for a formal application except for a current financial statement and I am sending you herewith the company's last statement. As set forth in the application for Permit No. 6225 the plan of development of the company was to establish 'Clarence Saunders, Sole Owner of My Name' stores in Tucson and then proceed with the installation of

(Testimony of J. E. Johnson.)

stores in other parts of the territory covered by the company's franchise. The stock issue authorized in said Permit No. 6225 has been over-subscribed and the Tucson program has been financed and launched; and the company desires now to finance the installation of fifteen stores and a warehouse in Phoenix. Locations for the Phoenix warehouse and stores are now being secured and as soon as you grant the permit for the issuance of the stock necessary to finance the program, the patented fixtures will be ordered from the Clarence [167] Saunders Corporation at Memphis, Tennessee, and the stores installed and placed in operation in Phoenix as rapidly as possible.

Yours very truly,

(Signed)

DUANE BIRD."

Financial statement attached to this letter shows:

Assets	\$283,202.45
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Which includes \$151,000.00, value of license obtained from Clarence Saunders Corporation of Memphis, Tenn.

Liabilities	\$283,202.45
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Divided into four items as follows:

Preferred Stock Subscribed	\$113,200.00
Common Stock Subscribed	157,288.00
Accounts Payable	10,225.06
Surplus	2,389.00

(Testimony of J. E. Johnson.)

This statement is certified to on March 15, 1929, by A. E. Sanders.

Thereupon the Government introduced in evidence the files in connection with Permit No. 4854, issued to the Arizona Clarence Saunders Stores, Inc., marked Government's Exhibit 16, which abstracted to the issue, is as follows:

Arizona Corporation Commission Permit No. 4854, in identical form with Permit No. 6225, grants permission to Arizona Clarence Saunders Stores, Inc., to issue and sell "11,000 shares of its preferred stock at \$100.00 per share, and 70,000 shares of its no par common stock at \$7.50 per share. That a commission not exceeding 20% may be paid for the sale of preferred and common stock." The Permit was issued July 12, 1929, and expired June 30, 1930. It was given under the hand and seal of the Arizona Corporation Commission.

Attached to this exhibit is the application in the form of a letter from Duane Bird, Attorney, at Nogales, Arizona, addressed to the Arizona Corporation Commission, dated July 1, 1929, which reads as follows: [168]

"Kindly treat this letter as an application of the Arizona Clarence Saunders Stores, Inc., for a permit to issue 11,000 shares of its preferred capital stock at \$100.00 per share and 70,000 shares of its no-par common stock at

(Testimony of J. E. Johnson.)

\$7.50 per share. I am sending you herewith my check in the sum of \$172.50 to cover your fees for this permit. I have calculated the fees on the basis of 1/100 of 1% by reason of the fact that permits have already been granted and fees paid on \$1,251,000.00 as appears from your receipts Nos. 6989 and 7204. However, if the company is not entitled to calculate the fee on this basis kindly advise me of any balance due and I will remit it by return mail.

The application on file in connection with permit No. 6225 contains all the information required by you for a formal application except for a current financial statement and I am sending you herewith a copy of the last statement. The company now has in operation six stores and a warehouse at Tucson, Arizona, and three stores and a warehouse at Phoenix, Arizona. In addition thereto another store will be opened in Tucson during this month, seven Phoenix locations are under lease and buildings are in the course of construction and should be completed within sixty days, and one location in Mesa has been secured and the store building is now being completed. Fixtures for stores at these locations are now being built at the factory of the Clarence Saunders Corporation, and barring unforeseen circumstances nine additional stores will be opened by the corporation by September 1, 1929.

(Testimony of J. E. Johnson.)

The company will continue to open stores as rapidly as possible until its entire territory is covered."

Attached to the above letter was a balance sheet as of May 31, 1929, showing assets of \$454,280.96, and liabilities in a like amount. Included in the assets are:

"Concessions—Clarence Saunders License"	\$151,000.00"
The liabilities show:	
Accounts Payable	\$ 18,719.84
Accrued Royalties and compensation insurance	304.78
Preferred Stock Subscribed	381,800.00
Common Stock Subscribed	77,843.00
Common Stock issued for Clarence Saunders License	151,000.00
Total	610,643.00
Less: Due on subscriptions	177,903.59
Balance	<u>432,739.41</u>
Plus: Surplus	2,516.93

[169]

which makes a full total of \$454,280.96 assets.

Thereupon the Government introduced in evidence the files in connection with Permit No. 5246, issued to United Clarence Saunders Stores, Inc., and the file of the Arizona Corporation Commission thereon, marked Government's Exhibit 17, which abstracted to the issue, is as follows:

(Testimony of J. E. Johnson.)

Arizona Corporation Commission Permit No. 5246, dated March 10, 1930, given under the hand and seal of the Arizona Corporation Commission, to United Clarence Saunders Stores, Inc., which expired June 30, 1930. This permit gives permission to "issue and sell 10,000.00 shares of its no par common stock at \$10.00 per share; to issue and sell \$250,000.00 of its first eight per cent (8%) Serial Gold Debentures, as set forth in the application for this permit; that a commission of not to exceed 20% may be paid for each One Hundred Dollars (\$100.00) of stock and/or debentures sold; that every purchaser of stock hereunder shall be furnished with a copy of this permit printed on the back of the subscription or receipt form used by the corporation; that this permit is granted in lieu of Permit Decision 4854, Docket No. 3970-B-2383, dated July 12, 1929, which authorized the sale of preferred and common stock of the applicant company, and which is no longer in force and effect."

Attached to this permit is the application of the company addressed to the Arizona Corporation Commission, dated March 5, 1930, executed and acknowledged on the same date, by A. E. Sanders, President, and J. M. Nixon, Secretary of the company. The officers of the company named in the permit, in addition to the Presi-

(Testimony of J. E. Johnson.)

dent and Secretary, are L. E. Sanders, Vice-President. A. E. Sanders, L. E. Sanders and J. M. Nixon, were all of the directors of the company. Attached to the application was a description of the physical assets in each of the retail stores, exclusive of merchandise, and a financial statement of December 31, 1929.

(This financial statement is set forth in full as Exhibit 40).

Thereupon the Government introduced in evidence the files in connection with Permit No. 5553 issued to the United Clarence Saunders Stores, Inc., together with the file, application and correspondence with the Commission, marked Government's Exhibit 18, which abstracted to the issue, is as follows: [170]

Arizona Corporation Commission Permit No. 5553, dated July 15, 1930, expired June 30, 1931, under the hand and seal of the Arizona Corporation Commission. Permission granted:

"To issue and sell 1,000 shares of its no par stock at \$10.00 per share.

To issue and sell \$20,000.00 of its first 8% Serial Gold Debentures.

That a commission of not to exceed 20% may be paid on each \$100.00 of stock and/or debentures sold."

Attached to this permit is the application dated June 30, 1930, executed by K. C. Van

(Testimony of J. E. Johnson.)

Atta, Vice-President and G. C. Partee, Secretary, of United Clarence Saunders Stores, Inc., and acknowledged by these officers on the same date. Attached to the application is property schedule as of May 31, 1930, showing value of fixtures and physical assets, exclusive of merchandise inventories, in 19 stores and the warehouses in Phoenix and Tucson, and automobiles, of \$173,947.03.

Financial statement of same date attached to application is as follows:

UNITED CLARENCE SAUNDERS STORES, INC.
FINANCIAL STATEMENT

MAY 31, 1930

ASSETS

Current Assets		
Cash	\$ 23,836.23	
Accounts Receivable	135,685.99	
Inventories (at cost)		
Merchandise	344,142.52	
Supplies	1,792.81	
	<hr/>	
Total Current Assets	505,457.55	\$ 505,457.55
INVESTMENTS & SECURITIES	108,200.60	108,200.60
Fixed Property Investments		
Fixtures & Equipment	163,384.05	
Automotive Equipment	10,362.93	
	<hr/>	
	173,947.03	
Less Depreciation Reserve	15,433.48	158,508.55
	<hr/>	
Carried Forward		\$ 772,166.10
		[171]

(Testimony of J. E. Johnson.)

Brought Forward		\$ 772,166.10
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DEFERRED CHARGES

Unexpired Insurance	4,796.57	
P—Pd Rents & Location Sites	16,600.30	
Organization & Development	36,143.00	
Trade Territory	5,606.00	
Comm.—Stock Sales	7,538.06	
Comm.—Deb. Sales	9,220.00	79,903.93

Other Assets

Concessions	151,000.00	
Stock Subscriptions	122,030.51	273,030.51

TOTAL ASSETS

		\$1,125,101.14
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LIABILITIES

Current Liabilities

Notes Payable	\$ 29,306.02	
Accounts Payable	62,702.53	
Trade Acceptances	5,663.86	
Accrued Expense:		
Pay Roll	70.00	
Royalties	809.89	
Comp. Ins.	1,832.83	
Int. on Deb.	1,536.67	

Total Current Liabilities	\$ 101,921.80	\$ 101,921.80
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Fixed Liabilities

Purchase Contracts Payable		3,491.95
First Series 8% Gold Deb.		
Authorized	\$1,000,000.00	
Unissued	953,900.00	46,100.00

RESERVES

Insurance	\$ 2,085.74	
Taxes	5,087.77	7,173.51

NET WORTH

CAPITAL STOCK

Preferred 8% Cumulative	\$ 669,800.00	
Comm.—No Par Value Shares	10.00	

(Testimony of J. E. Johnson.)

Total Outstanding		
Subscribed—Not Issued		
Preferred 8% Cumulative	\$ 222,200.00	
Comm.—No Par Value Share		
		[172]
<hr/>		
TOTAL SUBSCRIPTIONS		
TOTAL CAPITAL STOCK	\$ 892,010.00	
Premiums—Stock Sales	1,245.00	
Surplus 1929	51,625.33	
Profit & Loss 1930	21,533.55	
<hr/>		
TOTAL NET WORTH	\$ 966,413.88	966,413.88
<hr/>		
TOTAL LIABILITIES & NET WORTH		\$1,125,101.14
		<hr/> <hr/>

Trial Balance attached to application, same date, is as follows:

UNITED CLARENCE SAUNDERS STORES, INC.
TRIAL BALANCE, MAY 31, 1930

	Debit	Credit
Bank Account	\$ 23,836.23	\$
Accounts Receivable	135,685.99	
Inventories—Mdse.	344,142.52	
Inventories—Supplies	1,792.81	
Benson Location	4,337.90	
Glendale Location	2,017.40	
Tucson Location	22.50	
Prepaid Rent—Tucson	6,119.88	
Prepaid Rent—Phoenix	4,102.62	
Stocks & Bonds	108,200.60	
Unexpired Insurance	4,796.57	
Furn.—Fixtures—Equipment	163,584.05	
Automotive Equipment	10,332.98	
Commissions Paid—Stock	7,538.06	
Organization & Development	36,143.00	
Commissions Paid—Bonds	9,220.00	
Concessions	151,000.00	
Trade Territory Development	5,606.00	

(Testimony of J. E. Johnson.)

	Debit	Credit
Notes Payable		29,306.02
Trade Acceptances Payable		5,663.86
Cond. Sales Contracts		3,491.95
Accounts Payable		62,702.53
Interest Accrued—Bonds		1,536.67
Accrued Pay Roll		70.00
Accrued Royalties		809.89
Accrued Comp. Insurance		1,832.83
Accrued Taxes		5,037.77
Reserve—Depreciation		15,438.48
Reserve Insurance		2,085.74
Preferred C. Stock Authorized		5,000,000.00
Preferred C. Stock Unissued	4,108,000.00	
Common Stock Authorized		10.00
Premiums Paid on C. Stock		1,245.00
Surplus 1929		51,625.33
		[173]
Subscriptions—Receivable	\$ 122,030.51	\$
Bonds—Authorized		1,000,000.00
Bonds—Unissued	953,900.00	
Stores Ledger Control		21,533.55
	<u>\$6,202,439.62</u>	<u>\$6,202,439.62</u>

Distribution of Funds, as of the same date, shows:

UNITED CLARENCE SAUNDERS STORES, INC.
PHOENIX, ARIZONA

DISTRIBUTION OF FUNDS—MAY 31, 1930

Proceeds of Stock Sales turned into Treasury—Total Net Sales	\$ 691,638.40
Less: Exchanged for other stocks and bonds	140,219.54
Net amount turned into Treasury	<u>\$ 551,418.86</u>

DISTRIBUTION:

Fixed Property Investment	\$ 173,947.03
Prepaid Rents & Locations	16,600.30
Inventories	344,142.52
Cash on Hand	23,836.23
	<u>\$ 558,526.08</u>

(Testimony of J. E. Johnson.)

Thereupon the Government introduced in evidence Annual Report of United Clarence Saunders Stores, Inc., for the fiscal year ending June 30, 1930, marked Government's Exhibit 19, which abstracted to the issue is as follows:

Annual Report of United Clarence Saunders Stores, Inc., to Arizona Corporation Commission, for the year ending May 31, 1930, subscribed and sworn to by A. E. Sanders, President. This report is substantially the same as the financial statement of May 31, 1930, a part of Exhibit 18. [174]

Thereupon the Government introduced in evidence application for license as a dealer in securities by the Bond and Mortgage Corporation, together with Dealer's Permit, marked Exhibit No. 20, which abstracted to the issue is as follows:

Application of Bond and Mortgage Corporation for permit to deal in securities under the provisions of Article II, Chapter 38, Revised Code of Arizona, 1928. Proposes to sell \$472,500.00 common and preferred stock of Arizona Clarence Saunders Stores, Inc., divided into 17,500 shares of common at \$7.50 per share, and 3,500 shares of preferred at \$100.00 per share. Application signed by Wm. Greenbaum, President, and G. B. Greenbaum, Secretary. Application verified by above named officers.

(Testimony of J. E. Johnson.)

Dealers in Securities Permit No. 13, under the hand and seal of the Arizona Corporation Commission granting the application. Six applications for licenses as agents signed by Bond and Mortgage Corporation for the following agents: Charles, William, Gus and S. M. Greenbaum, Joseph Rose and Marco Messina.

The witness resumed: I made a search in the files of the Commission for all permits and annual reports made to the Commission by these companies and as far as the record shows that is all there is on file with the Commission.

CROSS EXAMINATION

Examining Government's Exhibit 14, Permit No. 6225 from the Arizona Corporation Commission, will state that the permit does not require the pooling in escrow of the 151,000 shares of stock. If the Corporation Commission had made this requirement it would have been contained in the permit unless a special order was subsequently made, and there is nothing in the files indicating that such order was ever made.

Whereupon

J. M. NIXON,

called as a witness on behalf of the Government testified: [175]

About the 1st of January, 1929, I became connected with the Arizona Clarence Saunders Stores. In January 1930 I was elected Secretary and Treasurer.

(Testimony of J. M. Nixon.)

Thereupon the Government introduced in evidence the first minute book of Clarence Saunders Stores, Inc., showing minutes from organization to December 10, 1929, marked Government's Exhibits 23 to 33, inclusive, which abstracted to the issue are as follows:

EXHIBIT 23:

Articles of Incorporation of Clarence Saunders Stores, Inc., heretofore described in Exhibit 1.

EXHIBIT 24:

Minutes of first meeting of Incorporators of above company, held in Nogales, Arizona, on November 28, 1928; A. E. Sanders and E. B. Horne, the incorporators, being present. Shows subscription list 1 share each to A. E. Sanders, E. B. Horne and Lelia Sanders.

EXHIBIT 25:

Minutes of first meeting of Directors of above company. The following directors present in person: A. E. Sanders, E. B. Horne and Lelia Sanders. A. E. Sanders elected President and Treasurer; E. B. Horne Vice-President and Secretary. By-laws attached. An offer of A. E. Sanders to sell license and franchise of Clarence Saunders Corporation to this company and to assign agreement with Cashway Markets, Inc., in consideration of 151,000 shares of the common stock. Resolution accepting offer and authorizing application to Arizona Corporation

(Testimony of J. M. Nixon.)

Commission for sale of 1,500 shares of preferred stock at \$100.00 per share, and 50,000 shares of common stock at \$1.00 per share, with a commission or brokerage of 20%. Attached to these minutes is contract for license to operate "Clarence Saunders, Sole Owners of My Name" food stores, heretofore described in Government's Exhibit 14.

EXHIBIT 26:

Written signed offer of A. E. Sanders relating to the 151,000 shares of common stock heretofore described.

EXHIBIT 27:

Minutes of special meeting of Stockholders of the [176] corporation, held at Nogales, Arizona, January 1, 1929, authorizing amendment to Articles of Incorporation changing the name of the corporation to Arizona Clarence Saunders Stores, Inc. All the stockholders present, to-wit, A. E. Sanders, E. B. Horne and Lelia Sanders.

EXHIBIT 28:

Special meeting of Board of Directors of the corporation, held at Tucson, Arizona, January 22, 1929. Directors A. E. Sanders, E. B. Horne and Lelia Sanders present. Secretary's salary fixed at \$200.00 per month, and President's salary at \$1.00 per month. President authorized to enter into contract with Greenbaum Brothers for the sale of

(Testimony of J. M. Nixon.)

stock and to allow commission of 20%; President to transact certain business of the company without any special meeting of the Board of Directors. Powers rather broad.

EXHIBIT 29:

Minutes of meeting of the Board of Directors, held at Tucson, Arizona, March 16, 1929. Present: A. E. Sanders, E. B. Horne and Lelia Sanders. Resolution passed authorizing issuance of 35,000 shares of common stock to A. E. Sanders for services performed; President instructed to make application to the Arizona Corporation Commission to sell 80,000 shares of common stock at \$5.00 per share and 10,000 shares of preferred stock at \$100.00 per share.

EXHIBIT 30:

Minutes of special meeting of the Board of Directors, held at Tucson, Arizona, June 29, 1929. Directors present: A. E. Sanders, E. B. Horne and Lelia Sanders. Motion made and carried authorizing treasurer to pay a semi-annual dividend on all preferred stock of record as of April 30, 1929, payable up to May 31, 1929, on a basis of 8% per annum, and also authorizing treasurer to pay interest at the rate of 8% per annum on all partial payments made on subscriptions for stock in the period covered by the preferred stock dividend. Another motion made and carried authorizing and directing

(Testimony of J. M. Nixon.)

the President to make application to the Arizona Corporation Commission for a permit to sell 70,000 shares of the common stock of Arizona Clarence Saunders Stores, Inc., at \$7.50 per share, and 11,000 shares of preferred stock at \$100.00 per share. The President was also instructed to enter into a contract with Greenbaum Brothers for the sale of this stock, allowing commission. The Treasurer was authorized to issue an option to Greenbaum Brothers, of Phoenix, Arizona, for 40,000 shares of common stock of Arizona Clarence Saunders Stores, Inc. at \$5.00 per share, the option to expire October 3, 1929. [177]

EXHIBIT 31:

Minutes of special meeting of the Board of Directors, held at Tucson, Arizona, June 29, 1929
Directors present: A. E. Sanders, E. B. Horne and Lelia Sanders. Fixed salary of A. E. Sanders, President, as \$1,000.00 per month, effective June 1, 1929. Passed resolution authorizing A. E. Sanders, as President, to make arrangements with Greenbaum Brothers, of Phoenix, for the purchase of Piggly-Wiggly Southwestern Co.'s preferred and common stock, allowing Greenbaum Brothers a commission of 10%, the Piggly-Wiggly Southwestern stock to be taken on the basis of \$100.00 for preferred and \$10.00 for common. The Treasurer was authorized and directed to hold any of the Piggly-Wiggly Southwestern stock acquired in the account of "Stocks and Bonds on Hand".

(Testimony of J. M. Nixon.)

EXHIBIT 32:

Minutes of special meeting of the Board of Directors, held at Phoenix, Arizona, October 21, 1929. This meeting related to authorizing various persons to withdraw funds from various banks in which the company had money, upon countersignature, with the exception of A. E. Sanders, where no countersignature was necessary. The Greenbaum defendants are not mentioned in these minutes.

EXHIBIT 33:

Minutes of special meeting of the Board of Directors, held at Phoenix, Arizona, December 10, 1929. Directors Present: A. E. Sanders, E. B. Horne and Lelia Sanders. Resolution authorizing name of the corporation to be changed to United Clarence Saunders Stores, Inc., and changing the capital stock set-up to 50,000 shares of preferred at \$100.00 per share, and 500,000 shares of common without par value. Resolution authorizing and directing the Treasurer to pay 8% per annum on all preferred stock issued and outstanding as of December 31, 1929, and 8% interest on the amount actually paid in on subscriptions to preferred stock of the corporation, provided that the subscribers are not in arrears in their payments.

Thereupon the Government introduced in evidence minute book of United Clarence Saunders Stores, Inc., showing minutes beginning January 21, 1930, to and including November 1, 1930, marked

(Testimony of J. M. Nixon.)

Government's Exhibit 22, which abstracted to the issue, is as follows: [178]

Minute Book of United Clarence Saunders Stores, Inc., showing the following minutes material to the issues in this case:

January 21, 1930: Special annual meeting of Stockholders, held at Phoenix, Arizona. Authorized the amendment of Articles II, V and XII, changing the name of the company to United Clarence Saunders Stores, Inc.; authorizing 50,000 shares of preferred stock at \$100.00 and 500,000 shares of common stock without par value; increasing amount of indebtedness that company may subject itself to to \$3,300,000.00; attached to minutes is financial statement of December 31, 1929, heretofore set out; electing A. E. Sanders, L. E. Sanders and J. M. Nixon directors.

January 21, 1930: Special meeting of Board of Directors. Present: A. E. Sanders, L. E. Sanders and J. M. Nixon; authorizing company to purchase one-half of the capital stock of a Kansas corporation known as "The United Clarence Saunders Stores Company" with its principal place of business at Topeka, Kansas, and to guarantee the payment of interest and principal of any debentures issued by the Kansas corporation up to the amount of \$1,000,000.00, the guarantee to be effective only at such time as the Kansas corporation shall have acquired assets of \$500,000.00.

(Testimony of J. M. Nixon.)

May 16, 1930: Special meeting of Directors. Present: A. E. Sanders, L. E. Sanders and J. M. Nixon. Resolution authorizing process to be served on the Secretary of State of Kansas in the event suit is brought upon the Arizona corporation in Kansas.

June 24, 1930: Special meeting of Directors. Present: A. E. Sanders, L. E. Sanders and J. M. Nixon. L. E. Sanders resigned as director and vice-president, and K. C. Van Atta was appointed to succeed her. J. M. Nixon resigned as secretary-treasurer, and as a member of the Board, and G. C. Partee was appointed to succeed him. Tom H. Brandt was appointed Treasurer; salary of President fixed at \$1,500.00 per month, effective January 1, 1930, and provided that President shall act as General Manager of all Clarence Saunders Stores in Arizona. Resolution adopted that the President and Secretary apply to the Arizona Corporation Commission for a permit to sell \$20,000 8% Debentures, and 1,000 shares of common stock at \$10.00 per share, and to pay 20% commission for such sale.

August 7, 1930: Special meeting of the Board of Directors. Directors present: A. E. Sanders, K. C. Van Atta and G. C. Partee. Financial statement of the company as of June 30, 1930, was presented by the President. The minutes state that it was prepared by G. C. Partee and approved by

(Testimony of J. M. Nixon.)

Tom H. Brandt. It was approved by the Board of Directors and a copy ordered spread on the minute book. A [179] resolution was passed removing Tom H. Brandt as Treasurer, and appointing G. C. Partee in his place. The financial statement above mentioned, appearing on pages 26 and 27 of Exhibit 22, shows:

Current Assets—show cash on hand	
and in banks	\$ 45,334.37
Accounts Receivable	124,101.17
Merchandise Inventories—at cost	276,836.59
	<hr/>
	\$446,272.13
Investments and Securities	109,801.91
Fixed Property Investments	166,351.41
Prepaid Operating Expenses	16,818.08
Other Assets	520,887.98
	<hr/>
	\$1,260,135.50
	<hr/> <hr/>
Current Liabilities	\$ 126,965.56
Fixed Liabilities (8%) Debentures	54,100.00
Reserves	1,867.34
Capital Stock issued and outstanding—preferred	690,400.00
Common—No par	10.00
Subscribed and unissued—preferred	201,400.00
Common—unissued	---
Surplus	185,392.60
	<hr/>
	\$1,260,135.50
	<hr/> <hr/>

(Testimony of J. M. Nixon.)

This financial statement has the following type-written certificate at the bottom:

“I hereby certify that I have examined the books and records of United Clarence Saunders Stores, Inc. as of June 30, 1930; that the foregoing balance sheet is in agreement therewith, and that, in my opinion said balance sheet correctly reflects the financial position of the company as of that date.”

(Signed)

JOHN W. WAGNER,
Certified Public Accountant.

September 29, 1930. Special meeting of Board of Directors, held at Phoenix, Arizona. Directors present: A. E. Sanders, K. C. Van Atta and G. C. Partee. This meeting authorized the change in the name of the company to United Sanders Stores, Inc.” and ordered the calling of a meeting of the stockholders for that purpose.

October 13, 1930: Special meeting of the Board of Directors, held at Phoenix, Arizona. Directors present: A. E. Sanders, K. C. Van Atta and G. C. Partee. A. E. Sanders resigned as President and H. D. Sanders was appointed to fill his unexpired [180] term. A. E. Sanders appointed General Manager of the company at \$250.00 per month.

November 1, 1930: Special meeting of Stockholders, held at Phoenix, Arizona. H. D. Sanders, President, presided; G. C. Partee acted as Secre-

(Testimony of J. M. Nixon.)

tary. 154,201 shares of common stock represented, out of a total of 230,061 outstanding. Authorized change of name to "United Sanders Stores, Inc."

Whereupon

TOM H. BRANDT,

called as a witness on behalf of the Government:

Thereupon certain books and records of the United Clarence Saunders Stores, Inc. were marked for identification as Government's Exhibits 34 to 39, inclusive.

My name is Tom H. Brandt, and I reside at Tombstone, Arizona. During the latter part of 1929 and the first half of 1930 I was employed by the Stores Company, first as ledger man, and then became comptroller, which I handled until August 1930. I started with the Stores Company about September 15, 1929, and remained with them until August of 1930. I was Treasurer for about three or four days. During my connection with these companies my duties were the usual duties of a comptroller, that is, to maintain the records of accounts, plan the accounts, the information that flows into them, render statements of the financial condition of the company, and analyze the causes of either failure or success of the business. I was familiar with all of the books, records and accounts of the company. I have examined, at your request,

(Testimony of Tom H. Brandt.)

the books which have been marked for identification as Government's Exhibits 34 to 39, inclusive. Those are the books and records of the Clarence Saunders Stores, Inc., and its successors in name. Part of those records were kept by me or under by direction. I have examined the entries in those books which were made by other parties than myself and I am familiar with the handwriting. The entries were made by parties employed by the Stores Company. [181]

CROSS EXAMINATION

I have examined these books and will say that they are not all of the records of the Clarence Saunders corporation. You have further subsidiary information that blends into these, these are missing, but I couldn't give you the complete list. "These are all of the books, you have all the subsidiary information. I have examined the books and will say that the accounts of the company that eventually blend into the general ledger are missing—that is to say, the records that help to make up this book, such as checks, vouchers and bills rendered. They are not here. Neither is the payroll and the detailed information that is accumulated through your journal and cash records, such as substantiates these records. These records are not here. The journal records, all journalization or forms of journalization are here. The accounts receivable ledger is not here. We have two phases of accounting—

(Testimony of Tom H. Brandt.)

commercial accounting, pertaining to the sale of groceries, and that of financial department, pertaining to the sale of stock. The subscription ledgers and the accounts receivable pertaining to the financial department are not here. The monthly trial balances which were taken, are not here. I made or supervised the making of these trial balances from September 1929 to August 1930, and one was made each month. I have testified that the stock books and accounts receivable are not here. You have one journal for the sale of it. The detailed and subsidiary information is not here. The subscriptions receivable are not here. The stock transfer stubs are not here either. I am not a certified public accountant. Insofar as the entries in these books which I have identified are concerned, I would say that they are true and correct insofar as my supervision extended. The books were not in balance when I went there; we went back and audited them and [182] balanced them.

“Q In so far as the original entries are concerned prior to your employment, you cannot say whether the books are correct or not?

A Through an audit, yes.

Q Will you kindly listen to my question? I said as to the original entries made in the books of the corporation, you cannot say whether they were true or not, prior to your employment anyhow?

A No.”

(Testimony of Tom H. Brandt.)

After I left the employ of the company in August, 1930, I could not say whether the entries are true and correct or not. The original entries made in the cash and disbursement records were taken from the vouchers, and they are not here. The original entries made from the cash receipt records are not here. Exhibit 36 for identification, called a record of cash receipts from September 1, 1930, to October 30, 1930, was a record made after my time and I cannot identify it in any way, and I don't know whether or not it is a true and correct record of the transactions it purports to set forth. The original sources from the journal, that is to say, subsidiary records, are only here in part. In so far as my time, the entries made in Exhibit 37 for identification, the journal, are true and correct. Referring to Government's Exhibit 38 for identification, which is a record of stock sales and subscription records, this was made up from a report that came from the financial department daily, and the original records of the transaction are not here. The detail showing the actual sales of the debentures and the subscriptions were made in writing, but are not in court. The entries made in Exhibit 39 for identification, comes in through your journalization of your cash books, your regular journal. [183] The source from which the general ledger entries are made are in turn your journal entries. I say the intermediate source because it reverts back to all the detail we spoke about before, substantiat-

(Testimony of Tom H. Brandt.)

ing the journal entries which are not here, but the posting medium which makes up your general ledger, are here. As to entries made in the general ledger, prior to September 15, 1929, I can say the entries are true and correct in so far as the audit was made. I cannot say that prior to September 15, 1929, the entries are true and correct as they were not made under my supervision, nor could I say that the entries made in the general ledger from early August 1930, on, are true and correct.

“Q As to Exhibit 34 for identification, Record of Cash and Disbursements, as to Exhibit 35 for identification, The Cash Receipt Record, as to Exhibit 36 for identification, Record of Cash Receipts from September 1st, 1930, to October 1st, 1930, as to Exhibit 38, Record of Stock Sales and Subscription Agreements, as to Exhibit 39 for identification, the General Ledger of the Company, entries in each and every one of those four identifications are not entries, original entries evidencing a transaction, the original evidences of the transaction made at the time the transaction takes place, are they?”

A No, those records are only sources of original entry.”

RE-DIRECT EXAMINATION

“Mr. FLYNN: Q Referring to the Government’s Exhibit 36 for identification, which you

(Testimony of Tom H. Brandt.)

stated on cross examination was kept after you had severed your connection with the company, in whose handwriting are those entries made? [184]

Mr. REIN: We object to the question on the ground it doesn't make any difference whose handwriting it is unless the witness is able to substantiate the entry. I might say I know whose handwriting is in that book, but I know nothing about the entry.

The COURT: Objection overruled.

Mr REIN: Exception.

A September 2nd, the first entry is in the handwriting of Freida Braun.

Mr. FLYNN: Q Was she an employee of Sanders Company?

A She was."

During the time I was connected with the company they were operating stores in different parts of Arizona. The information received from these stores daily were compiled from their cash register sales, which was brought to the general office on a form that entered into the regular accounting. The operating expense accounts of each store, in all its phases, was maintained in the general office.

"Q Now I will ask you if these books which have been marked for identification, if they contain all of the records of this company or the successors necessary to determine the operating

(Testimony of Tom H. Brandt.)

expenses, administrative expenses, and the net profit and loss of the company?

A That can be obtained from the general ledger.”

When I quit the company in August 1930, G. C. Partee took my place. He had been employed there also during my time, doing general ledger work and general bookkeeping under my direction.

“Q During the time of your employment there, were these records which are marked here as Government’s Exhibits 34 to 39, inclusive, kept [185] in the regular order of business?”

This was duly objected to by counsel for the Greenbaum defendants on the ground that it was not the proper way to lay the foundation for the introduction of books and records. The objection was overruled by the court, to which ruling the Greenbaum defendants duly excepted.

The witness resumed: I would think Government’s Exhibits 34 to 39, inclusive, were kept in the regular order of business.

RE-CROSS EXAMINATION

The records of the sales made by the various stores were not originally kept in the general office. They came in through the stores. The original entries of the receipts of the business and the stores were made in the stores themselves and collected daily.

Whereupon,

G. C. PARTEE,

called as a witness on behalf of the Government,
testified:

I reside in Carson City, Nevada. I was first employed by the Stores Company in January 1929. At first I was employed as bookkeeper, later as an auditor, and later as Secretary-Treasurer. At the time Mr. Brandt left the employ of the company, in August 1930, I was auditor. At the time he left I assumed charge of the accounting in the office. During all of the time I was with the company I was connected with the bookkeeping department in some way or other and I am familiar with the different sets of books kept by the company and the manner in which they were kept. I haven't seen the books since I came to town this time but will now examine them. The entries made in Government's Exhibits 34 to 39 for identi- [186] fication, following Mr. Brandt's severance from the company, were either made by me or under my supervision and direction, with the exception of a period after the U-Save Holding Corporation took all the books to Los Angeles, and excepting the detailed records. After that I had no jurisdiction over them whatsoever. That was about October 1930. I see that the general journal entries for the month of October and November were not made by me. I was connected with the company at the time of the receivership.

(Testimony of G. C. Partee.)

“Q During the time that you were connected with the company, I will ask you if these books which I have referred to here as marked for identification, were kept in the regular course of business of the company?

A Yes.”

Above question duly objected to by counsel for the defendants upon the ground that it is not a proper question to lay the foundation for the introduction of these books, which objection was overruled by the Court, to which ruling the defendants by their counsel then and there duly excepted.

CROSS EXAMINATION

These are not all the books that were kept by the company. This was a rather large concern and there are a lot of detail books. I could not recall all of them, but the stock ledgers are not here. The transfer record is not here. The stock ledgers on which was recorded the name of the stockholder and the amount of stock, is not here. The stock certificate books are not here. The stock journals appear to be here up to February 1930. The stock subscription journal prior to January 1929 and subsequent to March 1930 is not here. There are other books that are not here, such as the accounts [187] receivable and the accounts payable, and the detail record of the operation of the various stores, and things like that. I would call the operation of

(Testimony of G. C. Partee.)

the Stores operating accounts, used as detail information and then at the end of the periods transferred to the general books, which are here. No inventories are available here. The monthly statements are not here. These statements were compiled from the detailed operating records which I mentioned a while ago. The detailed operating records were kept in permanent form, I would say. Of course the statements, work sheets and things like that were not. Monthly trial balances were made throughout the time I was with the company and up to the time the books were taken to Los Angeles. None of those are here, nor are they in these books I have just examined. There were several operating books in which the operating accounts were kept, which I could not name at the present time, but they are not here. The entries made in these books over in California were not made under my supervision or direction and I don't know as to the truth or accuracy of those entries, or whether they fairly depict the transactions they purport to depict, and cannot vouch for them.

RE-DIRECT EXAMINATION

I believe I prepared one annual report for the Arizona Corporation Commission. Tom Brandt had prepared the reports up to the time his connection with the company was severed. While I was connected with the company statements were prepared as to the financial condition of the company and

(Testimony of G. C. Partee.)

sent through the mail to stockholders. These statements are what you call balance sheets. The information that went to make up the annual reports for the Corporation Commission contain certain operating information which is not in these records I have just examined, being Government's Exhibits 34 to 39 for identification. I could get the total profit or loss from the general ledger, [188] but as for the details, there is not sufficient information in these records to make up a detailed statement of profit and loss. Government's Exhibit 10, the statement of May 31, 1930, was made while I was with the company, either as bookkeeper or auditor, but before I had any official connection with the company. It was signed, and was probably prepared, by a Mr. Mason.

Whereupon

TOM H. BRANDT,

recalled as a witness on behalf of the Government testified:

During the time that I was connected with the company A. E. Sanders was also connected with the company in the capacity of President and General Manager. The books were kept in the office of the company on South Second Avenue, down at the warehouse, where Mr. Sanders also had an office. We made up a daily sales and a daily cash report,

(Testimony of Tom H. Brandt.)

and at the end of each month the operating balance sheets were made up, and were all submitted to Mr. Sanders. From time to time he wanted information about the books and he either came out to see them or, at his request, they were taken in to him. Statements were taken from those books showing the profit and loss and financial standing of the company, which were submitted to Mr. Sanders. Those statements were based upon the records which I have identified here and which have been marked Government's Exhibits 34 to 39 for identification. These last numbered exhibits for identification contain all the records, figures and information necessary to determine the operating expenses, administrative expenses, and the profit and loss of the business.

I am acquainted with the defendants Gus, Charles and William Greenbaum. During the time I was connected with the [189] company the necessary information that pertained to the financial department emanated from the offices of the Greenbaums. They made daily reports or statements of stock sales and monies collected by them, which were submitted for us to enter into our own records. We had that detailed contact, usually every day, with one or the other of the Greenbaum representatives. In the Fall of 1929, November or December, I discussed and submitted a monthly operating report and statement to Mr. Sanders down at the ware-

(Testimony of Tom H. Brandt.)

house, and there were occasions when Gus Greenbaum was present. At approximately the time I fixed, Gus Greenbaum and A. E. Sanders were present when there was a discussion as to the profit and loss of the company. One general profit and loss statement showing the general financial condition of the company was submitted for their information. The discussion of those particular statements was whether or not the accounting was entirely correct as to the true profit and loss of the stores operating.

I am familiar with the statement prepared from the books of the company and issued as of December 31, 1929. The instruments which you have shown me, marked Government's Exhibit 40 for identification, constitutes a statement taken from the books of the company and is the form in which we showed our financial statements. This statement was taken from the work sheets as made up from the books, and then a number of copies were mimeographed as being certified to and afterwards were shown to the trade to show our financial condition and to enhance our credit standing. A number of copies of that statement were given to Mr. Gus Greenbaum. Mr. Sanders did not prepare the statements but they were submitted to him for his approval, and upon the original being approved, I had copies made. I had about one hundred copies made. [190]

(Testimony of Tom H. Brandt.)

“Q At any time did Mr. Sanders examine the books of the company?

A Yes, sir”

Mr. Sanders at times made a personal examination of part of the books. He would come to the desk and look through the accounts receivable, and thumb through them and ask questions pertaining to this account and that account. I couldn't say he examined all the books, but in the interest of the records he came out and asked for information, and actually viewed the books and handled them with his own hands. He did this only occasionally. It was the general custom of the office there that these books were kept under Mr. Sanders' direction.

CROSS EXAMINATION.

I was comptroller of the company and the actual bookkeeping department was under my supervision, though the policy was set by Mr. Sanders. The books were kept at the warehouse in a safe and I had the combination to the safe, and I don't think Mr. Sanders ever opened that safe. Mr. Sanders' interest in the bookkeeping department was that the work be done as economically and efficiently as possible. He always worked in the interest of economy and efficiency. Government's Exhibit 40 for identification was actually prepared by me.

RE-DIRECT EXAMINATION.

When I first became connected with the Stores Company I was taken by Bob Bobbitt to Gus

(Testimony of Tom H. Brandt.)

Greenbaum, and also talked to Mr. Mason, who was then comptroller of the company. I did not have much conversation with Gus Greenbaum about any employment. Most of the conversation was between Mr. Bobbitt and Gus Greenbaum. Mr. Bobbitt had known of my work before and he recommended me as a capable man to handle the bookkeeping [191] system for the Clarence Saunders Stores. This conversation took place in the Greenbaums' office in the Security Building. At that time they were known as Greenbaum Brothers, and afterwards formed the Bond and Mortgage Corporation. The financial office of the Saunders Stores Company was in the Security Building and at that time was operated by Greenbaum Brothers. The Stores Company was in an entirely different building down on South Second Avenue. Greenbaum Brothers handled the sale of stock and securities of the Clarence Saunders Stores, Inc.

I am familiar with the literature that was used in connection with the sales of the securities of the Stores Company, and will say that it was handled in the financial department in the Security Building by the Greenbaum Brothers.

We had a rubber stamp of A. E. Sanders' name, which was placed on some of the circular letters sent out. It was kept at the Stores Company office at South Second Avenue and at the request of Mrs. Loveland, Office Manager, it was taken up to the Security Building. I took it up once myself,

(Testimony of Tom H. Brandt.)

and one of the clerks took it up once. We have at times taken up to the Greenbaums' office in the Security Building letterheads and envelopes for circularization use from our stationery stock at the warehouse. I have seen those circulars or letters after they had been typed or printed and after they had been signed with the rubber stamp, being the facsimile signature of A. E. Sanders. Mrs. Loveland was not employed by the Stores Company that I know of. Her work entailed a remittance advice daily of collections and subscriptions made in the sale of stock, and in the clearing of that detail it was necessary that that remittance come to the Clarence Saunders Company, and that was consummated through a form that showed the daily subscriptions. It was a detailed [192] contact with the office of the clerk there and the office of the clerk at the Stores Company.

Whereupon

GEORGE J. EARHARDT,

called as a witness on behalf of the Government,
testified:

I was employed by the receiver of the United Sanders Stores, Inc. by Mr. Woods, the auditor for the receiver. That was at the time the receivership started. I had occasion to see some of the books of the United Sanders Stores, Inc. that were turned

(Testimony of George J. Earhardt.)

over to the receiver. Examining Government's exhibits 34 to 39 for identification, I examined all but the top two.

CROSS EXAMINATION.

These are not all the books which I saw in the office of the receiver. There were quite a few other records, such as sales records, stock books, stock, ledgers, inventories, balance sheets, and monthly statements. These I did not come in contact with nor do I know what became of them. They were in storage at the Chambers Warehouse, in Phoenix. I think the original vouchers or the original entries, from which were taken the entries that now appear in Government's Exhibits 34 to 39 for identification, are still over in California. At any rate they never came into my hands. The operating accounts are not here in court, neither are the bound volumes of the monthly statements, nor the inventories. I am not familiar with the books of account before they were turned over to me, and cannot say that Government's Exhibits 34 to 39 for identification are in the same condition as they were at the time they were delivered to the first or second receiver, or to me. [193]

Whereupon

TOM H. BRANDT,

recalled as a witness on behalf of the Government,
testified:

(Testimony of Tom H. Brandt.)

I am familiar with the signature of Mrs. Loveland, A. E. Sanders and Gus Greenbaum. The first letter of Government's Exhibit 41 for identification is signed by Mrs. Loveland. The second letter by A. E. Sanders. The third letter is not signed by A. E. Sanders personally, nor by the rubber stamp facsimile of his signature. I don't know who signed that third letter. Referring to the fourth letter of this Exhibit for identification, it is not signed by Mr. Sanders, and I cannot tell who signed it. The next letter of this group, dated October 2, 1929, is signed by E. B. Horne. The letter dated October 11, 1929, is signed by Mrs. Loveland. The next letter, dated November 26, 1929, is signed with the rubber stamp signature of A. E. Sanders. The stationery on which this letter of November 26, 1929, is written is some of the stationery which was supplied by the Stores Company to Greenbaum Brothers and Bond and Mortgage Corporation. The letter dated December 18, 1929, is signed with the rubber stamp facsimile of A. E. Sanders' signature. The letter of April 3, 1930, is also signed with the rubber stamp facsimile of A. E. Sanders' signature. The letter of July 1, 1930, is signed with the rubber stamp facsimile of A. E. Sanders' signature. I am familiar with Mr. K. C. Van Atta's signature. The letter of July 21, 1930, bears his signature. He was an employee of the Stores Company. The letter dated December 29, 1930, which is attached to a notice of

(Testimony of Tom H. Brandt.)

special meeting of stockholders, is signed by G. C. Partee, an employee of the Stores Company. The mimeographed statement dated January 15, 1931, is signed by G. C. Partee. The letter of December 1, 1929, was signed by me. I dictated the letter and it was mailed out. I have seen letters similar to [194] the letter dated October 11, 1929, which is a multigraphed circular letter, in the office at the warehouse. They were prepared by Greenbaum Brothers. Some of them came back to the office of the warehouse of the Stores Company through the mails with allotment certificates attached. I know these letters were sent through the mail because the letter pertains to allotment certificates which were sent to all purchasers of stock, and in re-mailing these allotment certificates many of them did not go back to the Greenbaum office but came to the Stores Company and were taken back to Greenbaum Brothers:—that is how I know that allotment certificates were received through the mail. Referring to a letter dated December 31, 1929, which has attached to it another letter or notice of the same date, I have seen this letter in the office of the Stores Company on South Second Avenue. It was prepared by me and multigraphed copies were made by O'Neil & Company. They were placed in the mail by one of the clerks in the Stores office. I don't know the name of the clerk. The letters were prepared by me, and the clerk, on instructions, after they were stamped and sealed,

(Testimony of Tom H. Brandt.)

placed them in the post office. Referring to the letter of December 21, 1929, I have seen that letter in the office of the Stores Company. It was placed in the mail by one of the clerks, under my direction. The clerk mailing the letter was an employee of the Stores Company.

(At this juncture the Court instructed the Clerk to take Government's Exhibit 41 for identification and mark each letter 41-A, 41-B, etc.)

The witness resumed: The first letter dated January 12, 1929, was signed by G. B. Greenbaum, one of the defendants here. [195]

CROSS EXAMINATION.

(The cross examination of this witness related to identifying the letter of December 31, 1929, and the letter of December 21, 1929, and is unimportant and immaterial)

RE-DIRECT EXAMINATION.

I dictated and signed the letter of December 21, 1929. Mr. A. E. Sanders directed the policy of the company, including the ordinary details or correspondence of the company. It is hard to explain the policy of the company in sending out mail. If it is mere detail you go ahead and do it yourself without going to Mr. Sanders. Concerning this particular letter, it was not necessary to go to him so I signed it myself.

Whereupon

MARGARET ROMLEY,

called as a witness on behalf of the Government,
testified:

I was employed by the Greenbaums in March of 1929 for a period of about seven or eight months. The arrangements for my employment were made with Mr. Gus Greenbaum, and I worked in their office in the Security Building mailing our circulars and form letters. Employed in the office besides myself were Mrs. Loveland, Miss Fitts, Mrs. Galland and Mrs. Bellas. Mrs. Loveland was book-keeper and stenographer. The general custom in regard to handling letters and circulars was to go through the files and get the names, and we addressed the envelopes for the circulars, folded them, and sent them out. This was done under the direction of Mr. Gus Greenbaum. We had two or three different form letters that were sent out. Mr. Gus Greenbaum and Mrs. Loveland's signatures were on some of them. Referring to Government's Exhibit 41-L for identification, being the letter dated July 1, 1930, it was signed [196] with the facsimile signature of A. E. Sanders made with a rubber stamp. I placed some of the letters that were sent out in the mail, by either taking them to the Post Office or putting them down the mail chute in the Security Building.

(Testimony of Margaret Romley.)

CROSS EXAMINATION.

I have no recollection of just what or when any particular form of these circulars went out. The rubber stamp that I speak of was kept in plain view on one of the desks in the office.

Whereupon

MRS. ADDIE DRISCOLL,

called as a witness on behalf of the Government, testified:

I reside at 1351 Fourteenth Street, Douglas, Arizona, and resided there during the years 1929, '30 and '31. Referring to Government's Exhibit 41-U for identification, consisting of a letter and envelope, I will say that I have seen it before at the Douglas Post Office when I took it out of the mail.

I received this letter through the United States Mails. I am pretty sure that it was enclosed in that envelope, but wouldn't swear it is the same envelope. I turned the letter and envelope over to Post Office Inspector Means. The letter was in this envelope, or one identical with it as far as the address and letter head is concerned, when I received it.

“Mr. FLYNN: We offer in evidence Government's Exhibit 41-U for identification.

* * *

Mr. HOWE: We object to the Government's

(Testimony of Mrs. Addie Driscoll.)

offer in evidence upon the ground and for the reason that it does not connect nor tend to connect the defendants Greenbaum or any one of them with the offense [197] charged and shows on its face that said defendants were not a party either to the mailing of the letter or the letter which elicited that response, incompetent, irrelevant and immaterial as far as the defendants Greenbaum or any one of them are concerned.

Mr. REIN: May I add the further suggestion there is no adequate proof of mailing by the defendants Greenbaum.

The COURT: Objections overruled.

Mr. REIN: Exception."

The document was received in evidence as Government's Exhibit 43, and is the identical letter set forth in the first count of the indictment, and reads as follows:

"Bond and Mortgage Corporation
Security Building
Phoenix, Ariz.

April 9, 1930.

Addie Driscoll,
Box 103,
Douglas, Arizona.

Dear Madam:

Answering your letter of April 8th, we wish to advise that the Common stock of the United

(Testimony of Mrs. Addie Driscoll.)

Clarence Saunders Stores, Inc., is being offered to the public through this company for \$10.00 per share.

Trusting that this is the information you desire, we are,

Yours very truly,

BOND AND MORTGAGE CORPORATION,

By: (Signed) M. LOVELAND,

Assistant Secretary." [198]

The witness resumed: I received Government's Exhibit 41-A for identification through the mails at Douglas, Arizona. It was enclosed in a stamped envelope addressed to me. The document was received in evidence as Government's Exhibit 44, which abstracted to the issue is as follows:

"Letter from Arizona Clarence Saunders Stores, Inc., dated June 18, 1929, signed by M. Loveland, Secretary to Manager, acknowledging the receipt of subscription to stock.

(The witness gave the same testimony as to Government's Exhibits 41-B, 41-E, 41-F, 41-G, 41-H, 41-I, 41-J, 41-K, 41-L, 41-M, 41-N and 41-T for identification, which were received in evidence, with the exception of 41-I and 41-J, and which abstracted to the issue are as follows:

(Testimony of Mrs. Addie Driscoll.)

EXHIBIT 45.

(41-B for identification):

Letter from Arizona Clarence Saunders Stores, Inc., dated July 16, 1929, signed by A. E. Sanders, President, enclosing stock certificates and stating "You will find that your investment in Clarence Saunders Stores will be one of the most profitable ever made", and "with Clarence Saunders' guiding hand over the different stores to be established under his name, you can only see one thing and that is, within a few years you will find Arizona Clarence Saunders Stores the outstanding food distribution stores in the world."

EXHIBIT 46.

(41-E for identification):

Letter from Arizona Clarence Saunders Stores, Inc., dated October 2, 1929, signed E. B. Horne, Secretary, being a form letter enclosing allotment right certificate allowing recipient to purchase common stock at \$5.00 per share, the public quotation being \$7.50 per share. Strong boosting letter dwelling on the great volume of business being done by the company, and urging that more stock be purchased under the allotment certificate, thereby saving \$12.50 per unit; predicting a marked advance in the common stock in the near future.

(Testimony of Mrs. Addie Driscoll.)

EXHIBIT 47.

(41-F for identification):

Letter from Arizona Clarence Saunders Stores, Ind., dated October 11, 1929, signed by M. Loveland, Secretary to Manager, thanking the purchaser for taking advantage of allotment [199] certificate and stating that "In order that you may receive your dividend checks and other communications promptly, we ask that you kindly keep our treasurer advised of your correct address."

EXHIBIT 48.

(41-G for identification):

Form Letter of Arizona Clarence Saunders Stores, Inc., dated November 26, 1929, signed with rubber stamp facsimile of A. E. Sanders' name, cautioning stockholders to not trade stock "for nebulous issues of uncertain values" even if listed on the New York Stock Exchange; and cautioning stockholders not to buy stock on margin, and stating that "through your preferred stock you are receiving 8% a year on your investment from the proceeds of the stores and warehouses." "I believe that your common stock will eventually surprise you by the large annual income per share you will receive from it over a long period of years." This letter also stated that the Arizona Stores are already establishing records and that they had put in an order for 32,000 cases of Del Monte products,

(Testimony of Mrs. Addie Driscoll.)

worth approximately \$220,000.00, and had placed another order with the Duncan Coffee Company of Houston, Texas, for over 4,000 pounds of "Sole Owner—Finest Coffee", which the letter states was a world record order, and that "Your stores in Arizona are doing an enormous business. Do not gamble away your interest in them". The letter further calls attention to the very large rate on the investment "considering the wide margin of safety which protects your investment

EXHIBIT 49.

(41-H for identification):

Form Letter of Arizona Clarence Saunders Stores, Inc., dated December 9, 1929, signed by rubber stamp facsimile of A. E. Sanders' signature, states in effect that in view of the fact that the retail business has reached such large proportions that the company's entire attention should be confined to merchandising activities and that the financial department will be discontinued after this date. It further states that the Bond and Mortgage Corporation, Suite 701, Security Building, will hereafter handle the stock issues. States that the company expects to begin operation of the first group of stores in New Mexico during the early part of 1930, and recommends the purchase of additional stock from the Bond and Mortgage Corporation, where "you may be assured you will receive the same efficient and courteous service to

(Testimony of Mrs. Addie Driscoll.)

which you are accustomed from all persons in any way connected with your company." Notice of annual meeting of stockholders attached to this letter. [200]

EXHIBIT 50.

(41-K for identification):

Form Letter from United Clarence Saunders Stores, Inc., dated April 3, 1930, signed by rubber stamp facsimile of A. E. Sanders' signature, states in effect that Henry Ford advocates chain stores; that on April 12th our Prescott store will be opened and the company would then start to invade the northern territory; that some time during April a store at Glendale would be opened, and that "in the other towns of the State where stores are to be opened we hope to have them operating by the end of 1930. The volume of business at present has been very satisfactory, and we expect that this year will run into several millions of dollars."

* * * "Recently the State Corporation Commission granted the United Saunders Stores, Inc., a permit increasing the price of the common stock to \$10.00 per share, at which price we understand these shares are now offered by the brokers to the public."

EXHIBIT 51.

(41-L for identification):

Form Letter from United Clarence Saunders Stores, Inc., dated July 1, 1930, signed by rubber

(Testimony of Mrs. Addie Driscoll.)

stamp facsimile of A. E. Sanders' signature. States in effect that the volume of business of the stores company has steadily increased and that the stockholders personal interest in the company "has been the moving factor for the splendid showing that has been made." * * * "The writer has had the pleasure of just returning from Memphis, and judging from the volume of business done by other units throughout the country, Arizona is among the real leaders. We are trying to make the Arizona unit the largest in the country and the only way this can be accomplished is through your cooperation. Boost your company wherever possible" etc.

EXHIBIT 52.

(41-M for identification):

Form Letter from United Clarence Saunders Stores, Inc., dated July 21, 1930, signed by K. C. Van Atta, Vice-President. States in effect that since January 26, 1929, when the first store was opened 18 additional stores have been opened, making a total of 19 in Arizona, and that they expect to have a great many stores scattered over the State where they can be profitably operated. "Our volume of business is beyond any figure that we had anticipated, with each month showing a substantial increase. You, no doubt, are aware that Clarence Saunders Stores in Arizona are home owned, home operated, and operated by Arizona capital." [201]

(Testimony of Mrs. Addie Driscoll.)

EXHIBIT 53.

(41-N for identification):

A mimeographed copy of letter to stockholders of United Clarence Saunders Stores, Inc., dated September 29, 1930, mimeographed signature of A. E. Sanders, President, calling attention to stockholders meeting to be held November 1, 1930, for the purpose of changing the name to United Sanders Stores, Inc. Also states that under the present franchise agreement with Clarence Saunders they have to pay him 1/2 of 1% of the gross volume of business, which amounts to about \$10,000.00 a year, and that under the new plan they will be able to increase their volume of business and save the stockholders this immense royalty by doing away with the Clarence Saunders franchise agreement. Attached to letter is a notice of special meeting to stockholders and blank proxy.

EXHIBIT 59.

(41-T for identification):

Letter from Arizona Clarence Saunders Stores, Inc., dated December 21, 1929, signed by Tom H. Brandt, comptroller, which states "In reply to your letter of December 18th, we suggest that you get in touch with the Bond and Mortgage Corporation, 701 Security Building, as they are now handling our company's securities."

The defendants duly objected to receiving each of said exhibits in evidence as they were offered be-

(Testimony of Mrs. Addie Driscoll.)

cause they were hearsay and not binding upon the Greenbaum defendants, and for the further reason that there was no adequate proof of mailing, but the Court overruled each of said objections, to which rulings counsel for the defendants then and there duly excepted.

The witness resumed: I received the notice dated October 6, 1930, through the United States Post Office at Douglas, Arizona, contained in a stamped envelope, being Government's Exhibit 41-O for identification.

The notice was received in evidence as Government's Exhibit 54, which is as follows: [202]

“UNITED CLARENCE SAUNDERS STORES,
INC.

305 South Second Avenue
Phoenix, Arizona

October 6, 1930.

NOTICE TO STOCKHOLDERS

No doubt you have received a notice of a special meeting called for the latter part of this month. This meeting is of utmost importance to every investing stockholder of the United Clarence Saunders Stores, Inc., and we would certainly like for every one that possibly can to attend this meeting. If not to send in their proxy but we prefer to see them in person.

The primary purpose for which this meeting is being called is to change the name of the company

(Testimony of Mrs. Addie Driscoll.)

from United Clarence Saunders Stores, Inc., to The United Sanders Stores, Inc., of Arizona and to further change the plans of the company in respect to operation and management of the additional stores it proposes to establish in this state.

Under the original plan you were identified with the Clarence Saunders Corporation under a franchise agreement. We are paying one-half of one per cent of our gross sales for this privilege, which amounts to approximately \$10,000.00 a year at the present time. The officers of your company have felt for some time that it would be good business for the company to be able to operate as an independent corporate unit, entirely removed from any affiliations with the Clarence Saunders System.

Stores would be operated under the trade name of Sanders U-Save System and due to the unfavorable publicity which has been attached to Mr. Clarence Saunders' name in connection with recent business reverses, the name of Clarence Saunders might prove to be more of a liability than an asset to your company. Under the proposed change your company would function as a state unit of The Sanders Stores of America, the corporation to be formed and to control forty-two stores and five warehouses already established and doing business in Arizona and California, known as:

United Clarence Saunders Stores, Inc.,
Piggly-Wiggly Southwestern Company
Piggly-Wiggly Yuma Company
U-Save Holding Corporation

(Testimony of Mrs. Addie Driscoll.)

These stores and warehouses are now doing a volume of business of over \$3,000,000.00 annually and have assets totaling approximately \$2,800,000.00.

At this meeting the above plan and change of operating the stores of this company will be discussed and ex- [203] plained in detail and action will be taken in respect to a change of such plans and the officers of the company authorized to enter into all necessary contracts carrying out such changed plans, if the same meets with the approval of the stockholders at this meeting. At the present time your company is planning its initial Sanders U-Save store in Tucson and the officers are exceedingly desirous of having all necessary preliminary arrangements in connection with any change of plans disposed of in advance of the time this store is opened in order that no delay will occur in establishing other stores in the state of Arizona. Control of the Arizona unit has passed to H. D. Sanders, who, in turn, will pass his control over to The Sanders Stores of America, the Holding Company to be formed.

H. D. SANDERS has had a very wonderful career in western merchandising, was a merchandise broker at El Paso, Texas, organized the Texas Produce Company at El Paso, Texas; was also connected with the American Wholesale Grocery Company at El Paso, Texas. Later he entered the

(Testimony of Mrs. Addie Driscoll.)

retail field, opening the Piggly-Wiggly at Nogales, Arizona; from there he branched out over into the Yuma and California territory, where he purchased the Piggly-Wiggly Imperial Company, which was absorbed into his U-Save Holding Corporation. The fixtures which he invented are considered the most logical form of retail merchandising and will save the company thousands of dollars by installing this same equipment in our present stores.

He is a merchandising genius which has seldom been equaled and we know that you could not find a better man to be in charge of this unit.

Associated with H. D. SANDERS will be K. C. VAN ATTA, born in New York City, his first business training with the Chase National Bank of that city; later connected with the Murray-Lane Wholesale Grocery Company, operating wholesale and retail groceries throughout New Mexico and eastern Arizona. For the past five years he was connected with the California Packing Corporation, packers of Del Monte food products, whom he left recently to become connected with this company.

A. M. KALER, buyer, has a record that is unequalled in the United States. He has spent the past 24 years directly connected with the food industry; 16 years with Armour and Company and in 1922 he joined the Piggly-Wiggly System, with headquarters in Los Angeles. He took an active part in building up this unit from 16 stores to

(Testimony of Mrs. Addie Driscoll.)

200 stores, located in Los Angeles, California and vicinity, Salt Lake City and Ogden, Utah, and Cleveland, Ohio. After leaving this wonderful successful unit, which was purchased by the Safeway Company, he joined the Sun Maid Raisin Growers of Fresno, California, and traveled extensively over the United States, contacting chain stores and [204] other large business. Both his extensive general experience, as well as the knowledge of advanced chain store methods will be of tremendous value to this company and you are indeed fortunate to secure such an outstanding authority as our Purchasing Agent and Merchandising Manager.

WARFIELD RYLEY, General Manager; Mr. Ryley is a true descendant from a family of grocerymen. His father before him was in the general mercantile business. Mr. Ryley was born in Kansas City, Missouri, 55 years ago, attended their city schools and both John Hopkins and Yale Universities. For a number of years he was connected with the Ridenour-Baker Company of Kansas City, Missouri, one of the largest wholesale grocers of the United States. He later entered the general merchandise broker business in Arizona. Mr. Ryley is considered not only a gentleman of the highest integrity but an outstanding merchandise genius.

CY MEASDAY, who will be Manager of the Tucson division, practically built up your Piggly-Wiggly stores in Tucson, and Phoenix. Graduated

(Testimony of Mrs. Addie Driscoll.)

from the University of Arizona. From a small capital invested in these stores he made a wonderful success and earned the stockholders and owners an enormous profit. Recently these stores were sold out to the McMarr Stores and through this consolidation you were fortunate to secure the wonderful service of Mr. Measday.

J. S. MACKIN: Mr. Mackin, who will be connected with this organization in the capacity of General Manager of Retail Stores, is a merchant with a long record of store management. He is eminently qualified to keep the Sanders U-Save Stores where they are—always one step ahead of the procession.

He was formerly manager of the Trinity Grocery Company, wholesale grocers at Dallas, Texas; Manager of the American Wholesale Grocery Company, El Paso, Texas; Manager of the Star Cash Grocery, Houston and Dallas, Texas,—a chain of 120 retail stores.

With his knowledge of merchandising methods and chain store management he is invaluable to this organization.

A. E. SANDERS will still be connected with the company and on the Board of Directors but will be entirely in the Financial Department, associated with Mr. C. L. Patterson, who is the "Banker who turned Grocer." Mr. Patterson came to the U-Save System soon after it organized. Prior to then he

(Testimony of Mrs. Addie Driscoll.)

had been Vice President and Manager of the First National Bank of Yuma and Yuma National Bank for eight years. In 1926 he organized and became President of the Yuma Trust and Holding Company, leaving that company in February, 1930, to join the U-Save Holding Corporation. [205]

Mr. Patterson brings to Sanders U-Save System a recognized ability in corporate organizations and finance, having wide acquaintance in southwestern banking circles and a knowledge of legal financial questions gained from long experience in the banking field. The opportunities which the U-Save System presents attracted him to this organization.

We do not think that there is a chain store organization in the United States with a personnel as capable as the above referred to. Under the old arrangement in single state organizations it was impossible to secure a large group of outstanding men of this caliber on their directorate.

Mr. A. E. Sanders, the President of this company has accomplished something in Arizona which, we do not think has been equalled. The first Arizona unit was opened June 26, 1929, and in this short term has established 24 stores, doing a business of over \$2,000,000.00 per annum and we think they are the best group of stores in the United States. As you all know it costs a considerable amount of money to open and develop stores as rapidly as these and in order to protect all interests and make it the outstanding chain of stores in

(Testimony of Mrs. Addie Driscoll.)

America we decided to make this change in our general plan. Furthermore under this new change in plan the Sanders Stores of America will guarantee the payment of all interests and principal on debentures and the interest on the preferred stock, outstanding of the Arizona company.

They will also establish a Re-sales Department, to handle the resale of securities and under this new plan and set-up we have no doubt but what it will create an active market for your securities as well as show you wonderful returns for we firmly believe that your original investment in the United Clarence Saunders Stores, Inc., is going to be one of the most profitable and pleasant that you have ever made.

Sincerely yours,

UNITED CLARENCE SAUNDERS
STORES, INC.

By G. C. PARTEE,

GCP:MD

Secretary.”

The Greenbaum defendants duly objected to the receiving of said exhibit in evidence on the ground that there was no proof of mailing and that it didn't tend to connect them with the matters and things charged in the indictment, and [206] it is not binding upon them, or either of them, but the Court overruled said objection, to which ruling counsel for defendants Greenbaum then and there duly excepted.

(Testimony of Mrs. Addie Driscoll.)

The witness resumed: I received the letter marked Government's Exhibit 41-P for identification, through the United States mails at Douglas, Arizona, in a stamped envelope addressed to me. I received the letter dated January 10, 1931, marked Government's Exhibit 41-Q for identification, in a stamped envelope addressed to me at Douglas, Arizona.

Government's Exhibit 41-Q for identification received in evidence as Government's Exhibit 56, which abstracted to the issue is as follows:

Mimeographed letter to stockholders of United Sanders Stores, Inc., dated January 15, 1931, signed by H. D. Sanders, President, and G. C. Partee, Secretary. States in effect that the company has made considerable expansion during the past year and has in operation 26 retail stores in Arizona, and owns practically all of the outstanding stock of the Piggly-Wiggly Southwestern Co.; that 1930 had been a very hard year and on a whole was an unprofitable year; "That we are pleased to report that the most of our difficulties have been overcome and 1931 looks more than encouraging. * * * The U-Save Holding Corporation, an Arizona corporation, has purchased the control of the common stock of our company, and they are now cooperating with us in the operation of our business. This arrange-

(Testimony of Mrs. Addie Driscoll.)

ment will be very beneficial to the stockholders of our company, as it will greatly reduce our accounting and administrative costs, and give us the benefit of additional purchasing power and complete supervision of all departments at only a fraction of the expense this work has cost us up to the present time. We cannot help but believe that after the changes in our set-up the 'United Sanders Stores, Inc.' will progress faster and more profitably than they have at any time in the past. We expect to open a minimum of 10 new stores during the current year without any increase in our outstanding capital. The company is in good financial position, as will be shown by financial statement as of December 31, 1930, copy of which will be sent to each stockholder as soon as audit is complete. * * *” Attached to this letter is a notice of special annual meeting of stockholders for the election of three directors and the transaction of any business that [207] may come before the meeting, with blank proxy attached.

The Greenbaum defendants duly objected to the receiving of said exhibit in evidence on the ground that it was hearsay and not binding upon the Greenbaums, and there was not adequate proof of mailing, but the Court overruled said objection, to which ruling counsel for defendants Greenbaum then and there duly excepted.

(Testimony of Mrs. Addie Driscoll.)

The witness resumed: I received the letter of April 9, 1930, marked Government's Exhibit 43 in evidence; I received other correspondence from the Bond and Mortgage Corporation or the Arizona Clarence Saunders Stores, Inc. I do not remember now whether on April 9, 1930, all of my stock had been issued to me. I purchased eighteen shares of preferred stock at \$100.00 per share, and I think 560 shares of common stock at \$5.00 per share. After I had purchased some of this stock some dividends were paid upon it. I paid cash for some of the stock and was to buy other stock and pay for it as the stock went up and I could sell some of the stock I already had. While I owed some unpaid subscriptions on the preferred stock interest was paid me on the amount that I had already paid in partial payments. It was paid by the Stores Company and was Stores Company stock. I received two dividend payments. I do not remember for what years but I do remember the amounts. One dividend check was for \$50.50 and the other for \$40.00. I never figured the percentage of dividend but I took their word for it that it was eight percent.

CROSS EXAMINATION.

I called on Mr. Sanders at his office in the warehouse at Phoenix after I purchased my stock. It was about ten [208] months after I made my purchase. The stock was sold to me by Joe Rose, Wayne

(Testimony of Mrs. Addie Driscoll.)

Jackson and Collins. I bought stock from all three of them, though most of it was bought from Joe Rose. After the receipt of the letter of April 9, 1930, I did not buy or contract to buy any additional shares of stock of any kind of the Clarence Saunders Stores, Inc. or any of its successors in name. I have talked to Mr. Gus Greenbaum, or Mr. William Greenbaum, or Mr. Charles Greenbaum, but I did not talk with them, or either of them, about the purchase of stock.

RE-DIRECT EXAMINATION.

I talked to them in their office. I don't recall just when, but at the time I owed some unpaid subscriptions on stock I was up at the Greenbaums' office twice before the 9th of April, 1930, but how long before I couldn't tell you, although I remember that Joe Rose was present in the office. William Greenbaum and Gus Greenbaum were also present. I made no payments on subscriptions of stock after the time I talked to Mr. Sanders. I couldn't say exactly how long prior to the receipt of the letter of April 9, 1930, I had a conversation with Gus and William Greenbaum, but will say it was prior to the date of that letter. Subsequent to that conversation with the Greenbaums I paid for all of the stock I had at the time. I made no further purchases after that conversation, nor after April 9, 1930, and no stock was issued to me after the conversation prior to April 9, 1930. There wasn't much

(Testimony of Mrs. Addie Driscoll.)

said by the Greenbaums because Rose did most of the talking. It was he that sold me most of the stock. It was in regard to straightening out the stock with me that I had already paid for. I came to see about how to get my stock straightened out so I would get what I actually paid for and so I would not have to pay for the rest of the [209] stock. I had that conversation with Joe Rose before one of the Greenbaums, I wouldn't say which one for sure. No one else was present that I remember, except the Greenbaums and Joe Rose. I wouldn't say now whether it was one of the Greenbaums or both of them present, and I couldn't say now or indicate to you which one of them was present.

RE-CROSS EXAMINATION

I bought no more stock after April 9, 1930, nor did I make any further payments on stock that I had already bought after I received the letter dated April 9, 1930.

Thereupon Government's Exhibit 60 was received in evidence, being application for registration of agents in connection with permit No. 4854, showing that some 32 agents were registered by the Stores Company between January 28, 1929, and October 23, 1929. Among those registered were the defendants Gus, Charles and William Greenbaum.

Whereupon

MINOR BISHOP,

called as a witness on behalf of the Government, testified:

I have resided in Mohave County, Arizona, for about two years, but prior to residing in Mohave County I resided in Prescott, Arizona. I came to Yavapai County in 1913. I first came to Arizona in 1896. I am in the stock business and during the years 1929 and 1930 I purchased stock in the Stores Company. I purchased the stock from William Greenbaum. Government's Exhibit 61 introduced in evidence, which abstracted to the issue is as follows:

Two subscription agreements on Bond and Mortgage Corporation form, each having copy of Permit No. 5246 printed on back,—one in the name of Agnes M. Bishop for 150 shares common stock at \$10.00 [210] per share, paid in cash; and one in the name of Minor A. Bishop for 150 shares of common stock at \$10.00 per share, paid in cash. Both of these subscription agreements dated August 7, 1930, and were accepted by "Rose & Greenbaum, Subscription Agents."

The witness resumed: I saw this exhibit first in my home in Prescott. My wife was present when I saw it. I only purchased stock one time in the amount of \$1,500.00. The Exhibit was signed at

(Testimony of Minor Bishop.)

my home in August 1930. The first time I saw them I did not purchase any stock but my wife did, and later I purchased some. My wife purchased 15 shares of preferred stock. Mr. Greenbaum was not present when I purchased my stock from Mr. Goldberg, but he was present the first time when I discussed the purchase of stock with Mr. Goldberg. My stock was purchased after my wife purchased her stock. The stock was all paid for. We each purchased 15 shares of preferred, and 500 of the common.

Thereupon Government's Exhibit 62 was received in evidence, which abstracted to the issue is as follows:

Letter from Bond and Mortgage Corporation, signed by M. Loveland, Assistant Secretary, addressed to Minor A. Bishop at Prescott, Arizona, dated August 11, 1930, acknowledging receipt of subscription for 150 shares of common stock, and congratulating him upon having made this excellent investment, and stating "We believe it will prove to be more and more profitable as the years pass and the great chain of self-service grocery stores continues to grow throughout the southwest."

The witness resumed: The letter which you show me, dated August 12, 1930, was received by me in a stamped envelope, addressed to me at the Post Office at Prescott, Arizona.

(Testimony of Minor Bishop.)

Thereupon Government's Exhibit 63 was received in evidence, which abstracted to the issue is as follows:

Letter of Bond and Mortgage Corporation, dated August 12, 1930, addressed to Minor A. Bishop, at Prescott, Arizona, signed by M. Loveland, [211] Assistant Secretary, enclosing stock certificate for stock purchased, and stating "we earnestly believe that as time goes by, you will find that your investment in United Clarence Saunders Stores, Inc., will be one of the most profitable ever made. The stores were created by a genius in this particular line of merchandising. Clarence Saunders, through his wonderful merchandising methods, established the Piggly-Wiggly stores, and when retired had built a business in a few years that was prosperous and known all over the world, and his new stores are just as much advanced in modern merchandising as his old stores were over the old style grocery. With Clarence Saunders' guiding hands over the different stores to be established under his name, we can only say one thing and that is, within a few years you will find Clarence Saunders Stores the outstanding food distribution stores in the world." The letter goes on to say that the company trusts that he will take further advantage of the facilities for investment counsel and service as he may require.

(Testimony of Minor Bishop.)

The witness resumed: The letter dated January 10, 1931, in which the statement dated December 31, 1930, was enclosed, was received by me enclosed in a stamped envelope addressed to me at Prescott, Arizona.

Thereupon Government's Exhibit 64 was received in evidence, which abstracted to the issue is as follows:

Form letter from United Sanders Stores, Inc., dated at Phoenix, Arizona, January 10, 1931, addressed to the stockholders, signed by G. C. Partee, Secretary. Stated the rapid progress the company had made, and that on account of the business depression the company took a market loss on merchandise it had purchased from the Del Monte company; that the Clarence Saunders Stores, Inc., at Memphis, Tennessee, was involved in financial difficulties and was placed in the hands of a receiver; that the Clarence Saunders Corporation had no financial interest in the Arizona company except receipt of royalties under the concession, but nevertheless the failure affected the credit and confidence of the trade in all units operating under concessions from the Clarence Saunders Corporation; that on account of this loss of confidence the Arizona company's business had become so affected that it was required to abandon its expansion program and change its en-

(Testimony of Minor Bishop.)

tire set-up. "The result was a heavy loss to your company, due to conditions over which it had no control." The letter further states that in October 1930 the U-Save Holding Corporation purchased control of [212] the common stock of the United Sanders Stores, Inc. and since that time had been in active management of its affairs, and that this new change in management cut expenses approximately \$50,000.00 per annum. The letter further states that the warehouses were operating at a heavy loss and that it was costing them better than 7% to serve the stores through its own warehouses. That the U-Save Holding Corporation purchased the warehouse stocks at actual inventory and agreed to serve the United Sanders Stores at cost plus 5%; that the warehouse stocks inventoried at approximately \$110,000.00 and that the U-Save Holding Corporation gave the Sanders Stores \$69,100.00 in preferred stock and paid off approximately \$40,000.00 of Sanders Stores current indebtedness, and had extended them a line of credit for merchandise, which at the close of the year amounted to \$33,842.72; that this deal was very advantageous to the stockholders of the United Sanders Stores; that "the company is now in good financial position relative to assets and liabilities"; that before it can pay dividends upon its present capitalization it would have

(Testimony of Minor Bishop.)

to build up its reserves. Attached to this letter is a statement prepared by A. E. Skeats, Certified Public Accountant, as of December 31, 1930, showing:

Current assets	\$423,652.91
Fixed assets	170,316.93
Net Outside Investments	87,685.10
Deferred Assets	74,076.47
Organization and Development	259,963.24
Concessions	151,000.00
Total Accounts Payable	63,491.17
Payroll	2,069.66
Notes	10,689.74
Debenture Bonds outstanding—	
Less in Treasury	83,900.00
Net Worth	939,944.06

The Greenbaum defendants duly objected to the receiving of said exhibit in evidence on the ground that it was incompetent, irrelevant and immaterial, and not binding upon or applicable to the Greenbaums, or any of them, and as to them, and each of them, it is pure hearsay, and there is not sufficient proof of mailing, but the Court overruled said objection, to which ruling counsel for defendants Greenbaum then and there duly excepted. [213]

CROSS EXAMINATION

I never at any time had any dealings whatever with A. E. Sanders. I was not present when my

(Testimony of Minor Bishop.)

wife bought her stock. I bought my stock from a man by the name of Goldberg, and not from any one of the Greenbaums. I gave Goldberg my check for the stock.

Whereupon

JOHN MULDOON,

called as a witness on behalf of the Government testified:

I have resided at Seligman, Arizona, or near there for about eleven years, and have been in Arizona for about twenty-one years. I am a Stationery Engineer. In 1930 I purchased some stock in the Arizona Clarence Saunders Stores, Inc. The first purchase was about May 1930. I made my first purchase of stock from Charles Greenbaum in my cabin in Seligman, Arizona. I had a conversation with Charles Greenbaum in my cabin and in substance I told him I was very old and that I had rheumatism at the time, etc. and I was too old to buy stocks and bonds, and he said that I would get back the money in three years or before. He told me it was a great company and that they were not allowing anybody in there but people that belonged to the Masonic Order and that he was giving me a chance to get in on it because I belonged to the Masonic Order. He told me that the company was the Sanders Chain Stores of Arizona. Subsequent

(Testimony of John Muldoon.)

to the purchase of the first block of stock I bought another \$1,000.00 worth, for which I gave Charles Greenbaum \$800.00 in cash and two Masonic bonds of \$100.00 each. The second block of stock was purchased from Charles Greenbaum in my cabin at Seligman. I purchased some more stock on the date I signed the instrument you show me, and I gave \$3,000.00 in cash and \$5,000.00 [214] of gold debentures I had for common stock. This last transaction was with Sam Greenbaum (not a defendant) and the instrument was filled out by him. At first I purchased \$5,000.00 of gold debentures, then Greenbaum came back and changed these gold debentures for common stock, and I bought \$3,000.00 more of common stock. That transaction, as I said before, was with Greenbaum.

Thereupon the Government offered in evidence as one Exhibit, the first instrument dated May 22, 1930, one dated July 29, 1930, and one dated August 6, 1930.

VOIR DIRE EXAMINATION

The instrument that bears No. 5727 in the upper right hand corner was filled in by Charles Greenbaum. The yellow sheet which is numbered 5985, was filled in by Sam Greenbaum, and the one which bears No. 5989, also was filled in by Sam Greenbaum.

At this juncture the instruments were admitted

(Testimony of John Muldoon.)

as one exhibit, to-wit, Government's Exhibit 65, which abstracted to the issue is as follows:

Three subscription agreements on Bond and Mortgage Corporation form, Arizona Corporation Commission permit printed on back of each, signed by John Muldoon, Subscriber. Subscription 5727, dated May 22, 1930, for 4200.00 worth of United Clarence Saunders Stores, Inc. 8% debentures, shows debentures paid for in cash in full—by cash and \$200.00 worth of Masonic bonds, to Greenbaum & Rolfe, Subscription Agents.

Subscription 5985, dated July 29, 1930, for 400 shares of common stock of United Clarence Saunders Stores, Inc., at \$7.50 per share. Total \$3,000.00. Paid in full to S. M. Greenbaum, Subscription Agent.

Subscription 5989 for 400 shares of common stock of United Clarence Saunders Stores, Inc. at \$7.50 per share, exchanged for 3 debentures of the same company of \$1,000.00 each.

The witness resumed: The letter dated July 31, 1930, [215] was received by me through the mail enclosed in a stamped envelope addressed to me at Seligman, Arizona.

Whereupon the Government introduced in evidence Government's Exhibit 66, which abstracted to the issue is as follows:

(Testimony of John Muldoon.)

Letter from Bond and Mortgage Corporation, dated July 31, 1930, signed by M. Loveland, Assistant Secretary, enclosing stock certificate No. 1914 for 400 shares of common stock of United Clarence Saunders Stores, Inc. This letter is identical with Government's Exhibit 63 heretofore referred to.

Whereupon the Government introduced in evidence Government's Exhibit 67, which abstracted to the issue is as follows:

Three stock certificates of United Clarence Saunders Stores, Inc., being numbered 1914, 1978 and 2007, respectively, for 400, 400 and 267 shares of common stock, and dated respectively, July 31, 1930, August 12, 1930 and August 19, 1930. The certificates were signed by G. C. Partee, Secretary, and K. C. Van Atta, Vice-President.

The witness resumed: The total amount of my purchases of stock and securities in Arizona Saunders Stores was \$8,000.00.

CROSS EXAMINATION

I never at any time whatever had any dealings with A. E. Sanders. My dealings were with Charley Greenbaum. I never saw Mr. Sanders in my life before now.

(W. R. Montgomery, called as a witness on behalf of the Government, and not having his records with him, was excused).

Whereupon

OSCAR SCHMIDT,

called as a witness on behalf of the Government,
testified: [216]

I received the three letters you show me, dated July 13, 1929, March 14, 1929, and January 31, 1931, through the mails at Globe, Arizona. They were all in stamped envelopes addressed to me. The letters and documents referred to were received in evidence as Government's Exhibits 70, 71 and 72, which abstracted to the issue are as follows:

EXHIBIT 70

Letter from Financial Department, Arizona Clarence Saunders Stores, Inc., dated March 14, 1929, signed by M. Loveland, Secretary to Manager, acknowledging receipt of subscription for 10 shares of preferred stock and 50 shares of common stock.

EXHIBIT 71

Letter from Financial Department, Arizona Clarence Saunders Stores, Inc., dated July 13, 1929, signed by M. Loveland, Secretary to Manager, acknowledging receipt of subscription for 10 shares of preferred stock and 50 shares of common stock.

EXHIBIT 72

Letter from United Sanders Stores, Inc., dated January 31, 1931, signed by G. C. Partee, Secretary and Treasurer. The letter was with reference to \$1,000.00 paid on subscription No. 5460 for

(Testimony of Oscar Schmidt.)

\$2,500.00. States that after crediting the interest up to December 31, 1929, amounting to \$10.64, there is a balance due of \$1,489.36; that the subscriptions are a bona fide agreement and not subject to cancellation, and that the selling agents had been paid full commission on subscription, and to cancel them would mean a loss to the company or to the subscriber. Letter extends reasonable time in which to pay for the subscription before taking advantage of forfeiture provision.

The witness resumed: I think I bought \$3,200.00 worth of stock at different times, for which certificates were issued to me. I received a dividend once and a credit of \$10.64 interest on the part of the subscription I had paid. I owed a balance of \$1,489.36, which I never paid.

CROSS EXAMINATION

I have never had any dealings at any time with Mr. [217] Sanders, nor have I ever seen him before. I never had any stock transactions with the Greenbaums, or any of them, and never heard of them until today.

Whereupon

CATHERINE RYAN,

called as a witness on behalf of the Government,
testified:

I reside at Prescott, Arizona, and operate a rooming house there. I have resided there for thirty-

(Testimony of Catherine Ryan.)

eight years. I purchased stock and securities in the Arizona Clarence Saunders Stores, Inc. during the year 1930. The first purchase was in the fore part of August, 1930, and was made from a man by the name of W. L. Raney. I didn't purchase stock from any of the Greenbaums, but I gave Mr. Charles Greenbaum my last payment of \$300.00 in my check. This was in payment of stock I had bought from one of the salesmen.

Thereupon Government's Exhibit 73 was admitted in evidence, which abstracted to the issue is as follows:

“7/21/30, Received of Catherine Ryan, Three Hundred & no/100 Dollars.

BOND AND MORTGAGE CORPORATION,
By: Chas. Greenbaum.”

The witness resumed: That was the only transaction had with any of the Greenbaums directly. The letter dated July 22, 1930, was received through the mail by me at Prescott, Arizona, and was enclosed in an envelope addressed to me. I also received a letter dated July 10, 1929, through the mails in the same way, at Prescott.

Thereupon Government's Exhibits 74 and 75 were admitted in evidence, which abstracted to the issue are as follows: [218]

(Testimony of Catherine Ryan.)

EXHIBIT 74.

Letter from Bond and Mortgage Corporation, dated July 22, 1930, signed by M. Loveland, Assistant Secretary, acknowledging receipt in the amount of \$300.00, and stating that the account would be credited with \$315.00 as per arrangements with the representative, and that certificates would be issued in a few days.

EXHIBIT 75.

Letter of Arizona Clarence Saunders Stores, Inc., dated July 10, 1929, signed by E. B. Horne, Secretary. Enclosing stock certificates for 3 shares preferred and 15 shares of common stock in Arizona Clarence Saunders Stores, Inc. The balance of the letter is almost identical with Exhibit 63.

The witness resumed: When I paid the \$300.00 to Charles Greenbaum he gave me credit for \$315.00, and I asked him why he wanted the money paid like this, and he said we are going to dismiss one of the stenographers from the office and cut down our expenses, and so I gave him a check for \$300.00 on The Valley Bank at Prescott. I bought 165 shares of the common stock and 3 shares of the preferred stock in the Arizona Clarence Saunders Stores, Inc. The arrangements I had with the Sanders salesman, D. C. Clark, was that I was to pay so much every month, until I paid the whole thing. The last I paid was the \$300.00 to Charles Greenbaum. I received

(Testimony of Catherine Ryan.)

\$13.00 dividends once. I never had any conversation with Charles Greenbaum at any time in regard to the company. My conversation was with D. D. Clark. The first one I ever talked to about the purchase of any stock was W. L. Raney. I did not make any purchase the first time he called, but did later. I never had any conversation with either of these salesmen in regard to the Arizona Clarence Saunders Stores, Inc. The proposition was simply presented to me. Mr. Raney was not a salesman. He had the stock already and transferred it to me. [219]

(At this juncture the defendant A. E. Sanders, in open court, before the Jury, through his counsel Duane Bird, requested leave to change his plea of "Not Guilty" to "Nolle Contendere". No objections were offered on behalf of the Government and the plea of "Not Guilty" heretofore entered was set aside and the plea of "Nolle Contendere" on behalf of the defendant A. E. Sanders entered.)

(A. E. Sanders was sworn as a witness on behalf of the Government, and admonished by the Court that the rule had been invoked, and was instructed that he was not to discuss the evidence he was about to give with any person other than the attorneys and Mr. Means, the Post Office Inspector. He was instructed to retire to the witness room in charge of the bailiff and hold himself subject to call.)

Whereupon

W. R. MONTGOMERY,

called as a witness on behalf of the Government,
testified:

I am connected with The Valley Bank and Trust Company at Phoenix, Arizona, and have been for some time. Referring to Government's Exhibit 68 for identification, I will say that I have brought with me the records of the bank in connection with that account, and also in connection with the account shown in Government's Exhibit 69 for identification. Referring to Exhibit 76 for identification, we received that instrument from this corporation, the Clarence Saunders Stores, Inc. I could not say just what individual presented it.

Thereupon the Government introduced Exhibit 76 in evidence, which abstracted to the issue is as follows:

Instructions to The Valley Bank at Phoenix, Arizona, dated July 2, 1929, with reference to account in that bank, giving copy of resolution passed by the Board of Directors at a meeting held June 29, 1929, authorizing A. E. Sanders, President, to sign or [220] endorse checks, drafts, notes, or other negotiable paper or securities on any and all depositories of Arizona Clarence Saunders Stores, Inc., without any countersignature, and authorizing Warfield Ryley to sign checks or drafts on any banks or depositories of the Arizona Clarence Saunders

(Testimony of W. R. Montgomery.)

Stores, Inc., when duly countersigned by Willis M. Dent, M. V. Lee or E. B. Horne. The signatures at the bottom of these instructions are: A. E. Sanders, E. B. Horne, Warfield Ryley, Willis M. Dent, M. V. Lee and E. A. Lassale.

The Greenbaum defendants duly objected to the receiving of said exhibit in evidence on the ground that it was secondary evidence and not the best evidence, and not binding upon them as it was hearsay, but the Court overruled said objection, to which ruling counsel for defendants Greenbaum then and there duly excepted.

The witness resumed: The letter in evidence as Government's Exhibit 76 was the letter on which these accounts, Government's Exhibits 68 and 69 for identification, were opened.

Thereupon the Government offered in evidence Exhibits 68 and 69 for identification, which were received as evidence as Government's Exhibits 68 and 69, photostatic copies of which are as follows: [221]

ADDRESS

STANDARD FORM NO. 6 PRINTED IN U.S.A.

CHARACTER AND CLASS OF PRINTING: 100% RECYCLED PAPER, 50% POST CONSUMER WASTE

REG. U.S. PAT. OFF. DESIGNER: EIGHT LINES LEFT

DATE	CHECKS	DEPOSITS	DATE	BALANCE
		BALANCE FORWARD	OCT 26 '29	478.25 *
OCT 30 '29	.38 -		OCT 30 '29	477.87 *
NOV 4 '29	.91 -		NOV 4 '29	476.96 *
NOV 13 '29	2.3 -		NOV 13 '29	476.63 *
NOV 13 '29	2.5 -		NOV 13 '29	476.38 *
NOV 22 '29	4.1 -		NOV 22 '29	475.97 *
NOV 25 '29	2.47 -		NOV 25 '29	473.50 *
NOV 26 '29	1.3 -		NOV 26 '29	473.37 *
DEC 3 '29	1.7 -		DEC 3 '29	473.20 *
DEC 7 '29	1.3 -		DEC 7 '29	473.07 *
DEC 10 '29	2.67 -		DEC 10 '29	470.40 *
JAN 13 '30	473.40 -		JAN 13 '30	0.00 *

Sand Exhibit hit No. 68

MARKED FOR

IDENTIFICATION ONLY

NOV 13 1934

J. H. C. BARNES, CLERK

U. S. DISTRICT COURT

U. S. DISTRICT COURT

U. S. DISTRICT COURT

U. S. DISTRICT COURT

U. S. DISTRICT COURT

U. S. DISTRICT COURT

U. S. DISTRICT COURT

U. S. DISTRICT COURT

Sand Exhibit No. 68

ADMITTED AND FILED

JULY 14

1934

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

By *Sand* Clarence Sanders
 Deputy Clerk

CASE NO.

2-473-68

vs

Sand

ADDRESS

STANDARD FORM NO. 8 - PRINTED IN U.S.A.

CHECKS DEPOSITED IN ADVANCE OF SERVICE - SEE ACCOUNT STATEMENT FOR DETAILS

DATE	CHECKS	DEPOSITS	DATE	BALANCE
		BALANCE FORWARD		574.79
SEP 7 72	.38 -		SEP 7 72	573.61 *
SEP 9 72	.84 -	.67 -	SEP 9 72	571.46 *
SEP 9 72	.38 -		SEP 9 72	571.08 *
SEP 11 72	1.33 -		SEP 11 72	569.75 *
SEP 16 72	.49 -		SEP 16 72	569.26 *
SEP 16 72	6.67 -		SEP 16 72	562.59 *
SEP 17 72	.17 -		SEP 17 72	562.42 *
SEP 19 72	.50 -		SEP 19 72	561.92 *
SEP 21 72	2.00 -	.99 -	SEP 21 72	558.61 *
SEP 23 72	.53 -		SEP 23 72	558.08 *
SEP 28 72	4.50 -	2.00 -	SEP 28 72	533.58 *
SEP 28 72	.53 -		SEP 28 72	533.05 *
OCT 4 72	10.00 -		OCT 4 72	523.05 *
OCT 8 72	37.82 -		OCT 8 72	485.23 *
OCT 9 72	1.91 -	.38 -	OCT 9 72	482.04 *
OCT 14 72	1.33 -		OCT 14 72	481.01 *
OCT 15 72	.78 -		OCT 15 72	480.83 *
OCT 18 72	1.74 -		OCT 18 72	479.00 *
OCT 19 72	1.17 -		OCT 19 72	477.83 *
OCT 25 72	.67 -		OCT 25 72	478.15 *

ARIZ C. LAURENCE SAUNDERS, INC

DIVIDEND ACCT #

305 S 2 AVE, CITY

IN ACCOUNT WITH
THE VALLEY BANK
PHOENIX, ARIZONA

666
OCT 31 1929

NOV 30 1929

FROM _____ TO _____

DATE	CHECKS	DEPOSITS	DATE	BALANCE
		BALANCE FORWARD 127		477 82
NOV 4 29	41 -			
NOV 22 29	41 -		NOV 22 29	475.97 * -
NOV 25 29	2.47 -		NOV 25 29	473.50 * -
NOV 26 29	1.3 - 6		NOV 26 29	473.37 * -
470.40 PAID				
Check No. <u>4062</u>				
Date <u>11/19/29</u>				

470.40 PAID

Check No. 4062
Date 11/19/29

Exhibit No. 69

Marked for Identification only

NOV 18 1934

J. A. ... COURT
UNITED STATES OF AMERICA

by Langley H. ...
Deputy Clerk

Case No. C. 4179 Div.

W.D. ... vs Saunders & Co.

Exhibit No 69

Admission Not Filed

NOV 14 1934

J. A. ... COURT
FOR THE DISTRICT OF ARIZONA

by Langley H. ...
Deputy Clerk

W.D. ... vs Saunders & Co.

ARIZ. AM-ANCE SAUNDERS, INC
 DIVIDED ACCT
 % TOM H. BRANDT, COMPT
 305 S 2 AVE, CITY

IN ACCOUNT WITH
THE VALLEY BANK
 PHOENIX, ARIZONA

FROM NOV 30 1929 TO DEC 31 1929

DATE	CHECKS	DEPOSITS	BALANCE FORWARD	DATE	BALANCE
DEC 7 29	13 -			DEC 7 29	473.00
DEC 10 29	2.67 -			DEC 10 29	473.07 *
DEC 13 29	470.40 -			DEC 13 29	470.40 *
					.00 *
					473.37

Please Enclose at this end Memo and Surcharge Check to the extent
 if no such is enclosed on this day the balance you withdraw will be
 charged to you

REMIT BY
 Please Enclose a Payment On Any Balance in this column

(Testimony of W. R. Montgomery.)

The Greenbaum defendants duly objected to the receiving of said exhibits in evidence on the following grounds:

“Mr. REIN: If the Court please, the defendants Greenbaum, and each of them, object to the introduction in evidence of 68 and 69 for identification, upon the following grounds: In the first place, they are not binding upon the defendants Greenbaum, no connection having been demonstrated, even by indirection between them and this account or this concern. In the second place the entries in these slips are merely entries taken from other books and other original records and therefore no exception to the hearsay rule as a book of original entry. In the third place there is a description of one exhibit 68 for identification and 69 for identification, which is merely descriptive with no supporting information that it is what it purports to be, that description on the top of those documents will not prove to this jury that that is what these accounts are and obviously the last entry on the last page is certainly not what the accounts purport to be.

The COURT: Let me see it. Mr. Witness, are the copies of duplicates?

A No, I think those are the originals, one of them is the statement of the account and the other is our original record on the dividend account, that ledger sheet.

(Testimony of W. R. Montgomery.)

Q This is the original sheet from the books of the bank?

A Yes sir.

Q It is. [227]

A That dividend account.

Q And the other one?

A This is the statement which is kept in duplicate. This is our permanent record here.

Q That was sent to the depositor?

A Yes.

Mr. REIN: May I add one further objection while you are considering those documents?

The COURT: You may.

Mr. REIN: The instruments are evidently, purported to show an account of the Saunders Stores. I do not believe that is any evidence whatever as to the Greenbaums without any foundation having been laid that there was any connection between them and this account or even any knowledge of them and I think they are getting the cart before the horse.

The COURT: That is a question of the order of proof. The objection is overruled. Admitted in evidence.

Mr. REIN: Exception."

The witness resumed: Referring to Government's Exhibit 68, the column headed "checks" indicates checks written on the account and paid against the account, and the figures over the heading "bal-

(Testimony of W. R. Montgomery.)

ance" indicates the balance in the account after the checks were paid. The same applies to Government's Exhibit 69 in evidence. The column "deposits" indicates whether or not deposits were made to the account and the amounts shown. The signatures attached to Government's Exhibit 76 in evidence are the signatures the bank recognized as authorized to draw checks on the accounts testified to. [228]

CROSS EXAMINATION

I am Assistant Cashier of The Valley Bank, but I did not make the entries on the exhibits which have been introduced in evidence. I do not know who made those entries and I have not made any efforts to ascertain whether the person who made the entries is available or not. I do not even know from my personal knowledge that they are correct, nor do I know what the actual transactions were as evidenced by those accounts. There are no other records in the bank evidencing what these exhibits purport to evidence. The customer makes an entry on a deposit slip when the deposits are made, and that slip is the bank's original record. The deposit slips are transcribed to the ledger sheet, and also the statement sheet. As to withdrawals, the checks are the original records. I do not know whether or not the entries are true and correct but assume it from the fact that it is a usual bank entry. If we had made an error I assume it would have been corrected on the same day it happened. From my own

(Testimony of W. R. Montgomery.)

personal knowledge I cannot say whether the entries on the deposit slips were correctly transcribed on the bank statements. The same is true as to exhibit showing withdrawals and checks. From my own personal knowledge I do not even know the purpose of the account. The designation of the account is up to the depositor, as the bank has no means of knowing for what actual purpose the account is created.

“Mr. REIN: We move to strike from the files government’s Exhibits 68 and 69 on the grounds previously stated in our objection to the introduction of these exhibits.

The COURT: Motion denied.

Mr. REIN: Exception.” [229]

Whereupon

J. M. NIXON,

called as a witness on behalf of the Government,
testified:

I am familiar with the signature of G. B. Greenbaum and will state that the signature on Exhibit 42-A for identification is his signature.

Whereupon,

OLIVER FRYE,

called as a witness on behalf of the Government,
testified:

(Testimony of Oliver Frye.)

I live at Fort Huachuca, Arizona, and have lived in Arizona about twenty-two years. During the years 1929 and 1930 I purchased some stock in the Arizona Clarence Saunders Stores, Inc. from Greenbaum Brothers. I received the letter, Government's Exhibit 42-A for identification, in an envelope addressed to me at the Post Office at Garden Canyon, Arizona.

Thereupon Government's Exhibit 77 was admitted in evidence, which abstracted to the issue is as follows:

Letter from Financial Department of Clarence Saunders Stores, Inc., dated January 12, 1929, signed by G. B. Greenbaum, Financial Manager, acknowledging receipt of subscription for stock, and stating that "you can rest assured that the company's business will always be maintained on the highest possible business methods."

The witness resumed: I purchased \$10,000.00 worth of stock or securities in the Arizona Clarence Saunders Stores, Inc. I think I bought some stock before January 12, 1929.

Whereupon

MRS. J. O. PARSONS,

called as a witness on behalf of the Government,
testified:

I live in Flagstaff, Arizona, and have resided in Arizona for thirty years. I purchased some stock and securities in the Arizona Clarence Saunders Stores, Inc. The stock was purchased from Reinhardt and Jackson, Collins and Charles Greenbaum. The check you hand me was to Charles [230] Greenbaum for the Clarence Saunders stock.

Whereupon the Government introduced the check in evidence as Government's Exhibit 78, which abstracted to the issue is as follows:

Check on The First National Bank of Flagstaff, Arizona, dated May 27, 1930, for \$223.63, payable to the order of Bond and Mortgage Corporation, signed by Mrs. J. O. Parsons, Endorsed "Pay to the order of Phoenix National Bank—Bond and Mortgage Corporation."

The witness resumed: I had a conversation with Charles Greenbaum in regard to the stock in May 1929, at Flagstaff, Arizona. I don't recall anyone being present besides myself and Charles Greenbaum. That was at a time when I purchased some stock. Charles Greenbaum told me what a great opportunity it was for me to buy more stock and invest in the Clarence Saunders Stores. I don't

(Testimony of Mrs. J. O. Parsons.)

recall that he said any more. I believe he told me that they had twenty-five stores in New Mexico and Arizona, and forty in California, and that they all had the buildings and fixtures paid for. He said that they had purchased land in Winslow, Flagstaff and Williams and had it paid for and within ninety days would have the buildings up and would start business. I bought 20 shares of preferred stock at \$100.00 per share, 100 common at \$5.00 per share, 75 common at \$7.50 per share, and 600 in gold bonds. I was never paid any dividends on the stock, but I did receive about \$55.00 interest on deferred payments. This check, Exhibit 78, was returned to me from my bank, and the amount of the check was deducted from my account in the bank, and was endorsed by the Bond and Mortgage Corporation. I received the letter shown me, dated November 26, 1929, in the Post Office at Flagstaff, Arizona.

Thereupon the Government introduced the letter in evidence as Government's Exhibit 79, which abstracted to the issue is as follows: [231]

This is a form letter dated November 26, 1929, signed with the rubber stamp facsimile of A. E. Sanders' signature, and is identical with Government's Exhibit 48, heretofore described.

The witness resumed: I received the letter dated May 29, 1930, through the mail at the Post Office at Flagstaff, Arizona, enclosed in a stamped envelope addressed to me.

(Testimony of Mrs. J. O. Parsons.)

The letter was introduced in evidence as Government's Exhibit 80, which abstracted to the issue is as follows:

Letter from Bond and Mortgage Corporation, dated May 29, 1930, signed by M. Loveland, and acknowledges receipt of order for 75 shares of common stock in United Clarence Saunders Stores, Inc., and stating that they are crediting the account with \$400.00 on 20 shares of Packard stock turned in and that the balance of \$162.50 is to be paid in ten months. The balance of the letter is almost identical in phraseology with Government's Exhibit 62, heretofore described.

The witness resumed: The conversation I had with Charles Greenbaum lasted probably one-half hour, and I have stated all I remember of it.

Whereupon

JOHN CHARON,
called as a witness on behalf of the Government testified:

I reside in Phoenix, Arizona, and have resided here since April 1929. I bought \$2,100.00 worth of stock from J. M. Nixon and a fellow by the name of Nowell. The stock certificates were issued to me and I was paid two dividends, one for \$160.00 and one for \$80.00. This, I believe, was in 1930. The

(Testimony of John Charon.)

letter you show me, dated July 12, 1929, was received through the mail in a stamped envelope addressed to me at my house in Phoenix, Arizona.

The letter was introduced in evidence as Government's Exhibit 81, which abstracted to the issue is as follows: [232]

Letter from Arizona Clarence Saunders Stores, Inc., dated July 13, 1929, signed by E. B. Horne, Secretary, enclosing stock certificates for 20 shares of preferred and 100 shares of common stock in Arizona Clarence Saunders Stores, Inc. The balance of this letter is almost identical in phraseology and form with Government's Exhibit 63 in evidence, heretofore described.

The following objection and exception was made:

Mr. WHITNEY: We object to it on the ground no foundation has been laid for its introduction, it plainly shows on its face it is signed by E. B. Horne and there has been no connection shown between Horne and the Greenbaums, and further it is cumulative and incompetent, irrelevant and immaterial, and no adequate proof of mailing.

The COURT: Objection overruled. Admitted as Government's Exhibit 81.

Mr. WHITNEY: Exception."

TOM H. BRANDT,

recalled as a witness for the Government testified.

Thereupon the Government offered in evidence three documents, which were admitted in evidence as one document, as Government's Exhibit 82, photo-static copy of which is as follows: [233]

CLARENCE SAUNDERS STORES, INC.
FINANCIAL DEPARTMENT

SUBSCRIPTION RECORD FOR
1938
AUDITED BY

11/17/39
NO. 425

SUBSCRIPTION NUMBER	SUBSCRIBER	TOTAL SUBSCRIPTION	CASH PAYMENT	BALANCE	DUE FINANCIAL DEPARTMENT			DUE GENERAL OFFICE	
					DATE	AMOUNT	DATE	AMOUNT	AMOUNT
5180	D. O. Roe, Chippila, Arizona B.O.C 1000.00	1000.00	✓	27	62.50		137.50	✓	1000.00
5653	R. F. Easter, o/o A. S. & L. Hayden, Arizona 6P 500.00 25C 125.00	625.00	✓	40 38	15.62 46.88		62.50	✓	800.00
4237	Barnetta Ball Bentley Randolph, Arizona 10P 1000.00 50C 250.00	1250.00	✓	45 40 56	31.25 46.87 46.88		125.00	✓	500.00
4056	Frank B. Miller, 542 Adamsingto St., Phoenix, Ariz. 3P 300.00 15C 75.00	375.00	✓	34 65	9.37 28.13		37.50	✓	150.00
5782	T. A. Simpson Quartzite, Arizona 5P 500.00 25C 125.00	625.00	✓	50 68	31.25 31.25		62.50	✓	625.00
5182	Barnetta Ball Bentley Randolph, Arizona 10P 1000.00 50C 250.00	1250.00		45 40 56	31.25 46.88 46.87		125.00	✓	500.00

5125.00 475.00 550.00 2050.00 3075.00

3300
1875
1500
1000
500
250

PAID
Check No. 457
Date NOV 19 1939

Stock payment:	Amount
Corena M. Davilla	15.00
#154 - T. A. Baker	10.00
Lulu Ramsey, Payment in full	27.08
R. L. Best	324.83
Total Cash	3452.01

15.00
10.00
27.08
324.83
3452.01
195

PHOENIX OFFICE

INSTALLMENT COLLECTIONS MAILED IN

425-A
November 20, 1929.

5080	Beulah L. Brown	75.00
1880	Frances L. Brown	31.50
753	V.M. Brown	12.60
2686	J.C. Bruner	600.00
1165	Wm. Burgess	13.50
246	Ches. H. Clarkson	8.00
248	Phyllis Clarkson	8.00
249	Josephine Clarkson	8.00
247	Mrs. C.H. Clarkson	8.00
1804	Mrs. H.J. Cosgrove	15.00
273	W.D. Forsyth	18.90
2784	Mr. and Mrs. P.L. Gillespie	37.50
1769	Jos. H. Grafton	7.50
5464	Catherine L. Hamilton	60.00
r	" " "	45.00
711	O.C. Hine	21.50
2442	John F. Lewis	7.50
5073	McGee Bros.	8.25
727	H.O. Morrison	12.60
2036	Vivian Pugsley	30.00
5063	Retta A. Reese	7.00
5205	E. Irvin Roberts	7.50
5204	" " "	15.00
1284	Floyd Thomas	6.30
2067	G.M. Whitecre	81.50

1096.65

(Testimony of Tom H. Brandt.)

The witness resumed: Government's Exhibit 82 in evidence is a report showing the original subscriptions obtained from persons subscribing to our stock. It gives the name, the total amount of their subscription, and the amount of down payments received at that time, the amounts of commissions computed on such subscriptions and the accumulated totals thereof. The monetary values were then entered into our accounting system, and we used this as an original source of entry for further records. These were original subscriptions and there were no collections on these stock subscriptions by Greenbaum Brothers. The check attached to this exhibit was made and delivered for commissions earned by the Greenbaum Brothers for the sale of stocks for the Clarence Saunders Stores.

During the month of December, 1929, I had a conversation with Mr. Sanders in the presence of Gus Greenbaum. It has been so long ago I don't remember the details, but the substance of the conversation was that he told me he wanted me to prepare dividend checks on the preferred stock that was fully paid up, and to prepare a list of credit entries of those subscriptions of preferred stock that were not paid up, to be computed at 8%, for the year 1929. At that time I told him I didn't see how we could pay a dividend. He asked me why, and I said, "We have no earnings." There was some discussion as to whether we could pay it and I still objected to it on account of the fact that

(Testimony of Tom H. Brandt.)

we had nothing to pay the dividend from. I went back to the outer office and brought in a record showing the operating loss, and there was a discussion as to whether or not there was in fact a loss. I don't remember that Gus Greenbaum said anything at that conversation. Mr. Sanders was the one who wanted me to prepare the checks and the list. [238] Later, in June of 1930, I had a discussion with Gus Greenbaum by himself. Mr. Sanders was not in town at that time. He was in Kansas. The conversation took place down at the warehouse on South Second Avenue. We were due for the payment of a dividend for the first six months of 1930, and we still didn't have any earnings and didn't have any money to pay these checks with. Mr. Greenbaum said that they must be paid. I don't recall any other conversation, but the dividends were paid. The money to pay these dividends came from three sources. Gus Greenbaum loaned us, I think about \$8,000.00, taking in return post dated checks of the Clarence Saunders Stores for that amount of money. I phoned Nogales and through the manager of the Piggly-Wiggly Southwestern, I got another \$7,000.00 on account. I phoned the U-Save Holding Company at Yuma to A. E. Sanders' brother, H. D. Sanders, and I couldn't get any money from him, so I held up the issuance of the checks until such time as receipts from the stores were sufficient to cover them. The checks didn't go out all at once, but were handled over a period of three or four days until we could

(Testimony of Tom H. Brandt.)

see enough money in the bank to pay them with. Mr. Sanders signed the checks before he left for Kansas. During the period indicated Clarence Saunders Stock was being offered to the public for sale, but at the end of June 1930 there was very little activity in the sale of the stocks. Stock was being offered for sale at the time by the Bond and Mortgage Corporation. At the time of this conversation with Gus Greenbaum, in June 1930, I showed him the usual operating statement. That statement showed a loss of approximately \$96,000.00.

CROSS EXAMINATION

At the time this conversation with Gus Greenbaum [239] took place, in June 1930, I was comptroller of the company and knew that Gus Greenbaum was not an officer of the company. Neither was he a member of the Board of Directors. I knew that the affairs and management of the company was controlled by the Board of Directors or by Mr. Sanders, as President. I had no control or supervision over the books of the Bond and Mortgage Corporation, except as to the interlocking features of the two sets of accounts. I made no entries and did not direct what entries should go into the Bond and Mortgage Corporation's books, as that was purely a matter of their own bookkeeping. Their books were not kept at the warehouse, as the Bond and Mortgage Corporation was separate and apart

(Testimony of Tom H. Brandt.)

from the Stores Company. The Bond and Mortgage Corporation had no direction or control over what entries should be made in the books of the Stores Company as that was exclusively under my control and under my direction. I prepared the statement, Government's Exhibit 40, for identification, as comptroller of the company. I had told Mr. Sanders in December 1929 that the company had no earnings and that the company was unable to pay the dividend which Mr. Sanders requested be paid, and that was a correct statement of the condition of the company. During the month of December 1929, and particularly at the time I had this discussion with Mr. Sanders, in which I told him the company had no earnings, the company may had at that time on hand in cash over \$51,000.00. I would say that as of December 31, 1929, the Stores Company did have approximately \$51,000.00 in cash on hand. On or about the 31st day of December, 1929, the Stores Company had accounts receivable in the amount of \$70,974.05. If that is on the statement, Government's Exhibit 40 for identification, it is true. I knew of my own knowledge that on December 31, 1929, the [240] company had inventories carried at cost of more than \$250,000.00, and that they had fixed investments of over \$145,000.00. I also knew that the company had on hand as assets unpaid subscriptions for its capital stock in the sum of better than \$200,000.00, and that the company on that date had

(Testimony of Tom H. Brandt.)

a total net worth of better than \$875,000.00, and a surplus of \$33,780.00. The dividends were paid right after the first of the year 1930. The conversation was held some two or three weeks before we paid the dividends. I prepared a statement of the financial condition of the company as of the 31st of December, 1929, and delivered it to Mr. Sanders. I showed Mr. Gus Greenbaum a copy of this statement and gave him several mimeographed copies. I would not say that I knew this financial statement was to be inserted in the minute books of the company. The financial statement, Government's Exhibit 40 for identification, is the same as the financial statement shown on Page 9 of Government's Exhibit 22, which is one of the minute books of the company. I made up two statements as of December 31, 1929. One was partially mimeographed and there was an accounting error on it which we had to reconstruct. That is why I am confused on the two statements. As to whether this is the correct one, or the other is the correct one, I don't know. There is only a slight difference, however, of two or three thousand dollars in surplus. I delivered to Mr. A. E. Sanders the original of Government's Exhibit 40 for identification, which showed the Stores Company had total assets in excess of \$1,000,000.00 as of December 31, 1929, and that is true. The source of the assets were three: (1) From the sale of stock; (2) From revenues on the sale of groceries; and (3)

(Testimony of Tom H. Brandt.)

From the issuance of common stock for concessions. [241]

Mr. Gus Greenbaum had nothing whatsoever to do with the preparation of this statement, Government's Exhibit 40 for identification, which is also shown on Page 9 of Government's 22 in Evidence. He had nothing whatsoever to do with the entries on the books of the Stores Company. After the financial statement of December 31, 1929, was prepared it was handed to Mr. Gus Greenbaum as a true and correct statement of the financial condition of the company. Mr. William Greenbaum or Mr. Charles Greenbaum had nothing whatsoever to do with the preparation of that statement; nor did they have anything whatsoever to do with the books and records of the Stores Company, nor with the entries in such books and records.

RE-DIRECT EXAMINATION.

I have discussed the affairs of the Stores Company with Gus Greenbaum and occasionally received instructions pertaining to the financial department. Mr. Sanders concentrated on the grocery end of the business, and Gus Greenbaum handled the financial end or stock selling end of it, and the detail matters that entered into our books and correspondence I looked to Gus Greenbaum as sort of a manager of that phase of it. Mr. Sanders didn't have much to do with the financial part of it. I wouldn't say that any of the copies of Gov-

(Testimony of Tom H. Brandt.)

ernment's Exhibit 40 for identification were mailed out to the stockholders. It was mailed to the various commercial houses from whom we were buying groceries.

Thereupon Government's Exhibit 40 for identification was admitted in evidence, without objection, as Government's Exhibit 40, which is as follows: [242]

UNITED CLARENCE SAUNDERS STORES, INC.
ARIZONA—NEW MEXICO

FINANCIAL STATEMENT

December 31, 1929

ASSETS

Current Assets

Cash	\$ 51,326.72	
Accounts Receivable	70,974.05	
Inventories (at cost)	251,400.93	
	<hr/>	
Total Current Assets	\$373,701.70	\$ 373,701.70

Investments & Securities		113,100.01
	<hr/> <hr/>	

Fixed Property Investments

Fixtures & Equipment	\$147,743.79	
Automobiles & Equipment	8,939.98	
	<hr/>	
	156,683.77	
20% Less: Reserve for Depreciation	31,336.75	
	<hr/>	
	125,437.02	125,347.02
	<hr/> <hr/>	

Deferred Charges:

Unexpired Insurance	\$ 2,042.06	
Prepaid Rents and Location Sites	8,497.50	
Organization and Development	35,000.00	
	<hr/>	
	45,539.56	45,539.56
	<hr/> <hr/>	

Other Assets:

Concessions	\$151,000.00	
Stock Subscription Contracts	202,889.15	
	<hr/>	
	353,889.15	353,889.15
	<hr/> <hr/>	

Total Assets		\$1,011,577.44
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(Testimony of Tom H. Brandt.)

LIABILITIES

Current Liabilities

Accounts Payable	\$ 62,906.22	
Trade Acceptances	4,885.88	
Accrued Payroll	2,904.95	
Accrued Expenses (Current)	46,761.28	
Total Current Liabilities	<u>\$117,458.33</u>	\$ 117,458.33

Fixed Liabilities

Purchase contracts payable	9,182.38	9,182.38
Reserves		<u>746.27</u>

[243]

Net Worth

Capital Stock:		
Issued & Outstanding:		
Preferred, 8% Cumulative	\$462,000.00	
Common, No Par Value, 216,587 Shares	10.00	
Total Outstanding	<u>462,010.00</u>	
Subscribed—Not Issued:		
Preferred, 8% Cumulative	388,400.00	
Common, No Par Value, 23,725 Shares	
Total Subscriptions	<u>388,400.00</u>	
Total Capital Stock	<u>850,410.00</u>	\$850,410.00
Surplus		33,780.46
Total Net Worth		<u>884,190.46</u>
Total Liabilities & Net Worth		<u>\$1,011,577.44</u>

The witness resumed: The surplus of \$33,780.00 is made up, really; of two accounts: Capital Surplus and Earned Surplus, and this figure reflects both. I could not determine from this statement whether or not that surplus is a capital surplus or not.

“Q. Do you know of your own knowledge at that time from the condition of the company,

(Testimony of Tom H. Brandt.)

whether or not the surplus was a capital surplus?

Mr. REIN: Object to that as not the best evidence.

The COURT: Overruled.

Mr. REIN: Exception.

A. It shows a capital surplus, yes sir."

EXAMINATION BY THE COURT

I could only determine whether any net profit is reflected in that statement by referring back to the general ledger which would show it in detail. There was a net loss at the time the statement was made up. The \$96,000.00 loss was in [244] June 1930. At the time of the discussion with Mr. Sanders in December 1929, the operating statement showed a loss of approximately \$150,000.00 for the year 1929.

RE-DIRECT EXAMINATION

Referring to the \$151,000.00 item entitled "concessions" that was for the Clarence Saunders franchise which was transferred by A. E. Sanders to the Stores Company. The common stock was carried on the liability side at \$10.00 and this franchise or concession on the asset side at \$151,000.00.

RE-CROSS EXAMINATION

This 151,000 shares of stock is the same stock which was authorized to be issued to Mr. A. E. Sanders by the Arizona Corporation Commission. Mr. Gus Greenbaum had nothing to do with the authorizing of the 151,000 shares to Mr. A. E. San-

(Testimony of Tom H. Brandt.)

ders. The Cash-Way Stores option is entirely different from this transaction. The contract for the Cash-Way Stores was never used. That had nothing to do with the license agreement between Clarence Saunders and A. E. Sanders. When the second dividend was paid at the end of June 1930 the sale of stock had practically ceased.

“Q. At that time the Greenbaums and the Bond and Mortgage Company were making practically no effort to sell further stock, isn't that right?”

Mr. FLYNN: Object to that as calling for a conclusion.

The COURT: Objection sustained.

Mr. REIN: Exception.”

The Bond and Mortgage Company and the Greenbaum Brothers changed from selling stock to the selling of debentures in the early part of '30. I don't know when they stopped selling stock or debentures, but there was very little [245] activity after June 1930. The big volume of the sale of stock made by Greenbaum Brothers and the Bond and Mortgage Corporation was prior to the statement of June 1930.

Whereupon

MARGARET ROMLEY,

re-called as a witness for the Government, testified:

(Testimony of Margaret Romley.)

The witness identified Government's Exhibits 41-C and 41-D for identification, and stated that she had seen letters similar to these mailed while she was an employee of Greenbaum Brothers or the Bond and Mortgage Corporation. The letters were admitted in evidence as Government's Exhibits 83 and 84, respectively, which abstracted to the issue are as follows:

EXHIBIT 83

Form letter to stockholders from Financial Department of Arizona Clarence Saunders Stores, Inc., dated August 29, 1929, mimeographed signature of A. E. Sanders. States the various stores are rapidly nearing completion and that some stores have opened on certain dates, and that more than 1,100 people had purchased securities of the company and that each one of them was a satisfied purchaser; that "our common stock is now being sold at \$7.50 per share, this raise being justified by the very satisfactory condition of the company, which has really exceeded our expectations."

EXHIBIT 84

Form letter to stockholders from Financial Department of Arizona Clarence Saunders Stores, Inc., dated September 16, 1929, mimeographed signature of A. E. Sanders. This letter expresses enthusiasm of President of what he saw on September 7th at the opening of the

(Testimony of Margaret Romley.)

Clarence Saunders Stores in Los Angeles, and states that the stockholders are naturally interested to know of the progress that the Clarence Saunders Stores are making, not only in Arizona but in other sections of the United States; that "the opening of the Clarence Saunders Stores in Los Angeles was by far the greatest opening that was ever held in the whole world. Over 110,000 people actually made purchases in the Clarence Saunders Stores that day, and over 300,000 people visited the stores at the opening. Mr. Clarence Saunders, who came by airplane from Memphis, was overwhelmed at the representation [246] these stores received. It was a world beater, both for attendance and sales, and the writer is informed by the newspaper staff that the opening of the Clarence Saunders stores had only one other rival in California this year in creating excitement, and that was the Graff Zepelin, which stopped there on its trip around the world.

"There are now over 1,200 Arizonans who have made investments in the Arizona Clarence Saunders Stores, * * *. In my last letter to you I stated that I had an announcement to make soon that would be of prime importance to you. As it is customary with successful corporations to issue certain rights from time to time, the Board of Directors of your company

(Testimony of Margaret Romley.)

has decided to issue to the stock holders an allotment certificate, which will be explained to you in the next letter. This letter will come to you by registered mail with the allotment certificate enclosed. As President of this corporation, I advise you to take advantage of this opportunity as it will mean a great saving to you."

The Greenbaum defendants duly objected to the receiving of said exhibits in evidence on the ground that they were hearsay as to the Greenbaums, and for the further reason that there was not sufficient proof of mailing, but the Court overruled said objection, to which ruling counsel for the defendants Greenbaum then and there duly excepted.

Whereupon

SAM. W. HAMILTON,

called as a witness on behalf of the Government, testified:

I reside at Phoenix, Arizona, and I am by occupation a salesman for the Manufacturing Stationers, and was so occupied during the years 1929 and 1930. I believe I had some business dealings with Gus Greenbaum during that time. I called on him for the purpose of soliciting business in the line of printing and engraving. I took an order for print-

(Testimony of Sam. W. Hamilton.)

ing some letter heads and envelopes, and some bonds.

Thereupon Government's Exhibits 85 and 86 were received in evidence, which abstracted to the issue are as follows: [247]

EXHIBIT 85

Blank letter head of Arizona Clarence Saunders Stores, Inc., 701 Security Building, Phoenix, Arizona, and in the upper left hand has the printed words "Financial Department."

Attached to this letter head as part of this exhibit is an envelope, in the upper left hand corner of which appears: "Arizona Clarence Saunders Stores, Inc., 700-701 Security Building, Phoenix, Arizona."

On the blank letter head appears the following pencil notation:

"Or:	5/31/29
Del.	6/4/29/
2 M	L H
1 M	10 Env."

EXHIBIT 86

Blank letter head of the Bond and Mortgage Corporation, Security Building, Phoenix, Arizona, with the following pencil notation thereon:

(Testimony of Sam. W. Hamilton.)

“B & M Corp
Ord. 11-25-29
Del. 12-20-29
1 M #10 Env
1 M L H”

The witness resumed: Exhibits 83 and 84 in evidence are identical with stationery furnished by my company. Exhibit 87 for identification is a sample of debenture printed for and delivered to the Bond and Mortgage Corporation, was received in evidence, which abstracted to the issue, is as follows:

Specimen form of \$1,000.00 first 8% Serial Gold Debenture of United Clarence Saunders Stores, Inc. Principal due January 1, 1940. Interest payable on the first days of January and July of each year. Principal and interest payable at the Phoenix National Bank of Phoenix, Arizona. This specimen debenture has twenty \$40.00 coupons attached, and is negotiable unless registered.

Note: This debenture is not secured and states on its face that it is one of an issue limited to the principal sum of \$1,000,000.00.

[248]

CROSS EXAMINATION

Exhibit 85, which is a Saunders Company letter head was probably prepared a year before the Bond and Mortgage Corporation letter head, introduced

(Testimony of Sam. W. Hamilton.)

as Exhibit 86. Exhibit 85 and Exhibit 86 were ordered at different times. The bonds were printed by the Jeffries Bank Note Company of Los Angeles, but were delivered by us to the Bond and Mortgage Corporation about the 25th of April, 1930. I don't know whether payment was made to our company or direct to the Jeffries Bank Note Company. I didn't make the delivery myself, nor did I make the memorandum on the back of the envelope at which I am looking. Of my own knowledge I don't know whether the notations I am reading from are correct or not. My entire testimony is based on the notations made here, at least with reference to the preparation of these bonds.

Whereupon

A. E. SANDERS

called as a witness on behalf of the Government, testified:

I reside in Nogales, Arizona, and have resided there for a little over twelve years, where I have been in the grocery business. I know Gus, Charles and William Greenbaum and have know them since the latter part of 1927 or the early part of 1928. I met them first in the Piggly Wiggly store at Nogales. I was operating that store and they came down to sell an issue of stock in the Piggly-Wiggly. (This is "Piggly-Wiggly Southwestern Co." and is

(Testimony of A. E. Sanders.)

not to be confounded with "Piggly-Wiggly Holding Corporation of Yuma", an H. D. Sanders enterprise.) They were engaged in selling that stock until the latter part of 1928. After the issue was sold in the Piggly-Wiggly I had some further business dealings with them. In the latter part of 1928 before the Clarence Saunders Stores had been incorporated I had a conference with Will [249] Greenbaum in which he asked me if I thought we could get a concession from Clarence Saunders and I told him I didn't know whether I could or not and I either 'phoned or wired Clarence Saunders in Memphis, Tennessee. The matter was discussed with the Greenbaum brothers, Charles, Gus and William, several times in Nogales. After taking to Mr. Saunders in Memphis he either wired me or 'phoned me to come to Memphis, and I went there with Will Greenbaum. Mr. Greenbaum and I had an interview with Mr. Saunders in Memphis and I secured a franchise for Arizona and New Mexico outside of Dona Ana and Eddy Counties, New Mexico, for which franchise I paid \$2,000.00 to Clarence Saunders, and then came on back to Nogales. I organized the Clarence Saunders Stores, Inc. I went to my attorney, Duane Bird's office and there was something said about preorganization stock to Mr. Bird by Mr. Gus Greenbaum and I am not sure whether Will or Charles were present at that interview or not. I believe now it was Will Greenbaum that spoke about the preorganization

(Testimony of A. E. Sanders.)

stock. I can't recall the exact words of the conversation, but Mr. Bird told them that if they wanted to do business that way they would have to get some other attorney, that he was representing me and not them. The Company was organized in Nogales by me. Mr. Duane Bird prepared the papers. I received 151,000 shares of the common no par value stock. I gave for that stock my concession with Clarence Saunders and an option on the Cash-Way Stores in Tucson that I had. The concession I mentioned was to operate Clarence Saunders Sole Owner of My Name Stores in Arizona and New Mexico, and the option was for five Cash-Way Stores in Tucson owned by Wheeler & Perry. That option was never exercised.

“Q. What did you do with that stock, that 151,000 [250] shares of stock?

To which question the Greenbaum defendants duly objected on the ground that it was not the best evidence as the stock transfer book would show, which objection was overruled by the Court and an exception duly taken.

I gave 20,000 shares of that 151,000 shares of stock to Greenbaum Brothers. There was no consideration for that transaction. I had some more of that stock; 35,000 shares were issued me, but that was all turned back into the company, in 1929 we gave the Greenbaums the contract to handle all the stock of the stores company for a twenty percent commission and they sold it in the com-

(Testimony of A. E. Sanders.)

pany's name in 1929. I never sold a share of stock; it was all sold by the three Greenbaum defendants. The Greenbaums had established offices in Phoenix and Tucson; their Phoenix office was in the Security Building. They sold stock as Greenbaum Brothers until the end of the year 1929. We, the Stores Company, handled all the collections. Most of the stock was sold on subscriptions calling for deferred payments, and we handled the collections at our office. The money the Greenbaums collected on the initial subscriptions was brought us, but after that all subscription letters and collection letters were sent out from our office, down on South Second Avenue. When I say "our office" I mean the office of Clarence Saunders Stores, Inc. The latter part of 1929 Gus Greenbaum came to me and said, "Sanders, it is a lot of trouble to make all of these collections, you have a girl busy on it all the time. We are going to organize a bonded mortgage company and we will handle all the stock of the company; we will sell it and handle the collections, and bring you down eighty percent of our collections and you will issue the stock, and that will be all you will have to do with it." They [251] started doing that on January 1st, 1930, and after that date I had nothing whatever to do with the collections. The Bond and Mortgage Corporation, I believe, functioned all during 1930. Government's Exhibit 79

(Testimony of A. E. Sanders.)

in evidence was the letterhead used by Greenbaum Brothers in the Security Building and it was not used at the stores. The signature of Government's Exhibit 79 in evidence is a rubber stamp facsimile of my signature. The rubber stamp was made for the use of Greenbaum Brothers and the Bond and Mortgage company as we had no use for it whatever at the store. That letter head, Government's Exhibit 79, was the letter head we used at the store and I think I furnished part of the information that went into that letter. Government's Exhibit 45 is a form letter that was sent out by the stores over my signature. The signature of Government's Exhibit 83 is not my signature, but I wrote it on there. The stencil signature "A. E. Sanders" appearing on Government's Exhibit 79 was never used by us at our stores in the promotion of the sale of stock. I knew the Greenbaums had the rubber stamp.

CROSS EXAMINATION

H. D. Sanders is in El Paso. I did not say that the Greenbaums were connected with our stores during the entire year 1930, but did say that the Bond and Mortgage Corporation was in operation during 1930, handling our stock. The Bond and Mortgage Corporation was not connected with our company at any time. I don't know what date they stopped selling stock, but it must have been the latter part of 1930. The name of the first corporation I testified about was Clarence Saunders Stores,

(Testimony of A. E. Sanders.)

Inc. That company was incorporated by me through my attorney, Duane Bird. None of the Greenbaums were incorporators of that company, nor were any of them either an officer [252] or director of that company. Each and every resolution was passed by the Board of Directors, and the Board managed the company; it was not in any way managed by the Greenbaums. When the application was made for qualifying the stock for sale it was handled by Duane Bird. I applied for the issuance of 151,000 shares of the common stock to me through my counsel, Duane Bird. He was not counsel for the Greenbaums. Prior to meeting the Greenbaums I was in business and desired to extend it. I cannot recall the exact conversation had with you (Mr. Rein), Mr. Bird and Mr. Whitney, and others, last Friday afternoon, but I do remember I said that as far as I was concerned there was no intention on my part, or on the part of anybody that was connected with me, to defraud the public, that I was sold a thousand percent on the Clarence Saunders Stores. I thought the business was going to be successful, and as far as I knew the Greenbaums thought so. Other than the 19,000 shares which I transferred to the Greenbaums I received \$80.00 out of each \$100.00 of money raised by them. I don't know exactly what I received, and would not know without going over the books. I should think it was over \$800,000.00 in cash. The Greenbaums might have in some in-

(Testimony of A. E. Sanders.)

stances, I can't recall them right now, received part of that money other than the twenty percent which they were allowed by the Corporation Commission. The only instance I remember, we gave them \$250.00 for traveling expenses. I am not positive of that though. I don't know when the Piggly-Wiggly Holding Corporation was organized, as I know nothing about it whatever, and have never been connected with it, neither do I know anything about the U-Save Holding Corporation, as I had no connection with it whatsoever. I don't think the Greenbaums had any connection whatever with these last two [253] mentioned companies. These companies were organized by my brother H. D. Sanders. The United Clarence Saunders Stores tried to effect a consolidation but I do not think it was ever consummated. I resigned from United Clarence Saunders Stores, Inc., as President, and I don't remember whether I was named a director or not. H. D. Sanders took my place as President of United Clarence Saunders Stores, Inc. I think I remained as General Manager. The first six months I drew \$1.00 a year salary as President of Clarence Saunders Stores, Inc., and after that I drew \$1,000.00 a month, and later a minute entry was made for \$1,500.00 a month, but I was never credited with any \$1,500.00 salary, nor did I receive it. I stated that I paid \$2,000.00 for this Clarence Saunders franchise. I think personally I might have given Clarence Saunders more money, but

(Testimony of A. E. Sanders.)

there was never made a firm deal on it. I told him \$2,000.00 was all I could afford to pay at that time, and the other money, he just let it go at that. There was never a definite agreement on it, he let me have the franchise and said if I could get it I could give it to him or not, and I paid him the \$2,000.00 and that closed the deal. I don't know whether \$8,000.00 additional was to be paid or not. I do not know anything about the removal of \$100,000.00 worth of assets of United Clarence Saunders Stores, Inc., from Phoenix and taking it to Los Angeles. I do not know that \$100,000.00 of merchandise was removed, and as far as I know the Greenbaums did not know of it. I don't know whether H. D. Sanders knew of it or not. I told Mr. Gus Greenbaum that my brother had figured on a consolidation and was taking the United Clarence Saunders Stores, Inc., over. I believe I told him that with my brother's wonderful personnel back of him the corporation [254] could continue on a profitable basis. After that time Gus Greenbaum was selling stock that belonged to him and not to the Company. He certainly never withheld any money from me that I was entitled to that I know of. He wasn't selling unissued stock at that time but was selling the stock that I gave him. It was not traded stock. The United Sanders Stores, Inc., was the last name of the company known as United Clarence Saunders Stores, Inc., The contract between United Sanders Stores, Inc., and the

(Testimony of A. E. Sanders.)

U-Save Holding Corporation was in November, 1930, but "I don't know anything about it, I don't think." I believe I was up in Kansas at that time.

Referring to Government's Exhibit 54, which is a notice to stockholders dated October 6, 1930, I believe I was instrumental in drafting that letter, it sounds like mine, although I don't remember all the exact wording. Anything in that letter I think is so. Those stores and warehouses were actually doing a volume of three and a half million dollars annually. They had assets of two million eight hundred thousand dollars. I would say that a very substantial part of those assets were contributed by the United Clarence Saunders Stores, Inc., (United Sanders Stores, Inc.) If it is stated in that letter that I would still be connected with the company that is true.

Will Greenbaum made one trip with me first to Memphis, Tennessee, and then Gus made a trip with me. "My best recollection was at first, maybe it might have been later, I don't know, that we visited Saunders there". There was no secret whatever about the rubber stamp that I have been interrogated about. I authorized the stamp as I couldn't spend all my time signing letters, and it was a perfectly open transaction. [255]

"The COURT: Didn't you testify a moment ago you and Mr. Greenbaum went to see Mr. Saunders before the incorporation of your company?"

(Testimony of A. E. Sanders.)

A. Yes, and I was just trying—when we got that franchise I am under the impression that Will Greenbaum went with me, there might be a possibility, I made another trip right shortly after back there and he might have gone with me on that trip.

Q. They were all made before the incorporation?

A. No, one trip was made after we incorporated the company.

Q. How long afterwards?

A. Two or three months afterwards.

Mr. REIN: Q. As his Honor sets forth, after the incorporation of the company?

A. I said it might have been, I am trying to place it.”

During the year 1929, as President of Arizona Clarence Saunders, Inc., I made a single purchase of Del Monte products amounting to over \$200,000.00. We took a heavy inventory loss on that transaction. I do not know that any part of the merchandise went to the stores which H. D. Sanders was connected with. In October 1929 I placed an order, as President of the Arizona Clarence Saunders Stores, Inc., for over 4,000 pounds of coffee with the Duncan Coffee Company of Houston, Texas. We took *no* heavy inventory loss that transaction. I believe everyone in 1929 *too* heavy inventory losses no matter what they did.

(Testimony of A. E. Sanders.)

“Q. Was that part of the reason why this enterprise did not succeed?

A. No,—Well, it might have weakened the company a little on that loss. It is bound to weaken it some.” [256]

I have been in the grocery business practically all of my life.

“Q. You believe that a chain of grocery stores on well located spots, a number of them could purchase more cheaply and sell more cheaply than an ordinary individual store?”

To which question the Government objected as calling for a conclusion on the ground that it was not proper cross examination. The Court sustained the objection on the ground that it was not [257] cross examination, to which ruling the Greenbaum defendants then and there duly excepted.

When the Stores Company was organized I immediately proceeded to do business, and determined upon locations to open up stores, and did open up stores. Up until the time I severed my connection with the company I think I opened up twenty-two or twenty-three stores, including the Piggly-Wiggly Stores. I think there were twenty-one Sanders stores.

“Q. Mr. Sanders, was there ever a word between you and Greenbaums, or any of them, that you and they or any of them would com-

(Testimony of A. E. Sanders.)

mit a fraud upon the public or any member of the public?

A. There was not.

Q. Can you recall any conversation at any time or place between yourself and the Greenbaums, or any of them, where any unlawful act was contemplated?

A. There never was as far as I know."

The Bond and Mortgage Corporation stopped, as far as I know, selling or offering for sale any of the capital stock or debentures owned by the company along in June or July 1930. At that time they stopped buying stock from the company. They might have come in some time later and got one or two debentures. I couldn't say definitely whether or not the sale of stock by the Bond and Mortgage Corporation, or by any of the Greenbaums, involving the purchase from the Arizona Clarence Saunders Stores, Inc. by the Greenbaums and the sale to the public had stopped by the end of July 1930, as I don't know.

Under the Clarence Saunders concession, or contract, I was required to buy fixtures of certain kinds from the Clarence Saunders Corporation. That corporation made suggestions as to a uniform method of exhibiting merchandise in the [258] stores. As I stated before they had a uniform class of fixtures. I used some of the advertising used by Clarence Saunders, but some I didn't. Outside of paying that corporation one-half of one percent royalty on

(Testimony of A. E. Sanders.)

the gross volume of the business they had nothing to do with our stores after they were established. They had suggestions and things like that, but they didn't send any supervisors out to our stores at all. They could do so if they wanted to, as we were supposed to keep clean and sanitary stores. Clarence Saunders himself never wrote me a letter until after I broke with him, that is, after we changed our name to United Sanders Stores, Inc. I don't think that he called my attention to the fact that I had broken the contract by not merchandising according to the uniform system prescribed by him. I never saw the letter dated January 1, 1931, which you now show me, which is addressed to the United Clarence Saunders Stores, Inc., and signed by Clarence Saunders Corporation, by Clarence Saunders, President. That letter was received after the name was changed to United Sanders Stores, Inc., and we had broken with Clarence Saunders at Memphis. The 35,000 shares of common stock of Clarence Saunders Stores, Inc., mentioned in the indictment were issued to me and were turned back to the company intact. None of that stock was given to the Greenbaums and they never had anything to do with it whatsoever.

RE-DIRECT EXAMINATION

On cross examination I testified that the Clarence Saunders Stores, Inc. got \$80.00 out of each \$100.00 of stock sold, but that is not entirely so. Out of

(Testimony of A. E. Sanders.)

each \$100.00 they collected we would receive \$80.00 if they sold the stock. If I said that I received \$80.00 out of every \$100.00 of stock [259] sold, I answered the question wrong, because a lot of the subscribers paid forty percent down and the Greenbaums got twenty percent of that, and if the subscriber didn't complete his subscription payments then the company only got twenty percent. Out of the first forty percent that was paid the Greenbaums got twenty percent as their commission. That would be fifty percent of the forty percent. I testified on cross-examination that after the first permit to sell stock in the Clarence Saunders Stores, Inc., I went to Baker & Whitney. The Greenbaums had established offices in Phoenix—it was our original intention not to leave the Tucson territory but they established offices in the Security Building and they praised Phoenix to the skies and they induced us to come over and open a store here. I went to Baker & Whitney of my own volition. Mr. Gus Greenbaum and I went to call on Mr. Whitney at the same time at the suggestion of Duane Bird. The first name of the Company was Clarence Saunders Stores, Inc., and it was successively changed to Arizona Clarence Saunders Stores, Inc.; United Clarence Saunders Stores, Inc.; and finally to United Sanders Stores, Inc.

RE-CROSS EXAMINATION

I don't think that the Bond and Mortgage Corporation and the Greenbaums had anything to do

(Testimony of A. E. Sanders.)

with the sale of any stock of the company after the name was changed to United Sanders Stores, Inc. I thought at the time that the twenty percent commission could be paid out of the first forty percent paid, but that wasn't so. I don't know what the unpaid subscriptions amounted to; nor whether nearly all subscriptions were paid in full, but I think most of them were paid in full. [260]

Whereupon

L. D. NULL,

called as a witness on behalf of the Government testified:

I am a public accountant, residing in Phoenix, Arizona, where I have resided for about seven years. I have been a public accountant for a little over ten years and I am a graduate of the University of California in Business Administration and Law, and have had two or three years experience with the Spreckles Company as one of their supervising accountants, and three years with the largest certified public accountant in California, and about three years with Lee & Garrett in Phoenix. The remaining time I have been in business for myself. I have made a detailed examination of the books and records of the Clarence Saunders Stores, Inc., and its successors in name. Looking at these books, Government's Exhibits 34 to 39 for identification, I will say they represent some of the books we examined on the date of the appointment of the

(Testimony of L. D. Null.)

receiver by the State Court. Government's Exhibit 39 for identification is the general ledger of this company under the different names from the inception of the company up to the date of the receivership on March 19, 1931. Government's Exhibit 35 for identification is the "cash receipt record" from the inception of the company to the latter part of 1930. There is another volume covering cash received, but this is one of the records we examined at the time. Government's exhibit 37 for identification is the journal register and one of the records that we examined, and covers the period of all transactions of the company from the inception to the close. I have examined Government's Exhibit 38 for identification, which is the register of the sale of the capital stock of the company from the beginning to the end. Government's Exhibit 36 for identification is the balance of the "cash received record", another one of the [261] volumes we examined. This covers the period from September 1930 to the date of the appointment of the receiver. Government's Exhibit 34 for identification is the "cash disbursed record", showing all monies expended from the beginning in January 1929 right up to the appointment of the receiver. There are many other volumes that we examined in the course of our audit that probably numbered hundreds of different sorts of documents and records. We examined the accounts receivable, the accounts payable register, all the stock registers, invoice reg-

(Testimony of L. D. Null.)

ister, sales register, any number of different volumes. We traced the books of original entry into the general record or the general register. That book, the second one from the bottom, we traced into the general ledger.

“Q. Do you know whether or not these books that are here on the table are correct SUMMARIES of the original entry which you have examined?

A. They are.”

I spent some six months here in Phoenix examining the books at the warehouse of the company on Second Avenue. From my examination I am in a position to testify as to what the financial condition of the Clarence Saunders Stores, Inc., under its various names, was for the year ending 1929. I made a profit and loss statement for the year 1929, and have it here in my audit.

“Q. What does that statement show?

(Objection to this question sustained).

The record shows that a document consisting of 207 pages, bearing the notation:

“Canning, Wood & Null, Auditors, Income Tax Counselors, Ellis Building, Phoenix, Arizona” No. 34107-C, In the Superior Court of Maricopa County, Arizona, C. W. Messick, Plaintiff, v. United Clarence Saunders Stores, Inc., et al., [262] Defendants, entitled “Audi-

(Testimony of L. D. Null.)

tor's Tentative Report", which was submitted to counsel for the Greenbaum Defendants at 11:05 o'clock A. M., November 15, 1934. Whereupon the document was marked Government's Exhibit 88 for identification. At 11:10 o'clock A. M. this Court stood at recess until 2:00 o'clock P. M. on the same day. At 2:00 o'clock P. M. counsel for the Greenbaum defendants announced that they had not sufficient opportunity to examine the statement and compare it with the books, whereupon, after further discussion, the Court recessed until 10:00 o'clock A. M. November 16, 1934.

Whereupon the following proceedings were had:

The witness produced the statement above mentioned and resumed: That statement is a statement of the summary taken from all of the books of the Saunders Stores, Inc. It is a calculation—a resume of what transpired in the business as it is reported within the records and documents themselves. This particular statement includes receipts and expenditures and balances of the operating accounts. It is a matter that is subject to calculation.

Whereupon a statement of profit and loss for the year ending December 31, 1929, referred to by the witness, consisting of one page, was offered in evidence by the Government, and, Whereupon permission being first had and obtained the witness was examined on his voir dire.

(Testimony of L. D. Null.)

VOIR DIRE EXAMINATION

The report of which this profit and loss statement is a part is what we call a tentative report. The entire report was not prepared by me; it was prepared under both the supervision of my partner, Mr. Wood, and myself. Mr. Bradford also worked on the report, as also Mr. Ray. Mr. Brandt was employed three days on some special investigation that he had in mind that he wanted to disclose to us, and that was all his employment on the report. I worked on the report about 185 or 186 [263] days; Mr. Wood about 166 days; Mr. Bradford 159 days, and Mr. Ray 52 days. I examined all the books and records which underlie this profit and loss statement, and was familiar as far as possible with the underlying documents and data. There were some missing, very few. I was not obligated to reconstruct the records and books entirely; we did reconstruct some because the underlying documents such as files, etc. were not available. I would not say that my work was impeded to a considerable extent by the fact that there were missing records, but would say my work was complicated by missing records. Those missing records consisted of missing sales invoices, purchase invoices, cancelled checks, and missing accounts from the general ledger for the year 1929. The documents themselves eventually were made available. In order to check and verify the profit and loss statement offered in evidence a tremendous amount of work would be neces-

(Testimony of L. D. Null.)

sary; it would be necessary to go back and check sales records, purchase records and invoice records, and, I might say, hundreds of documents. You would not have to examine every one of the documents, I think you could go into them in a sort of test-check method. If you employed an accountant to make that one profit and loss statement I am referring to, it would take two or three weeks at least, and maybe longer. That would then amount to a test-check by an expert accountant. The supporting records for the profit and loss statement now offered in evidence would be the control records in the general ledger, the subsidiary ledger such as the cash received record, and cash disbursed records; those three books are here on the table. We would have the journal register which is on the table, but in order to go into the minute details of it we would have to have the invoice register, the itemized sales registers of the various stores in order to recapitulate into the total, and [264] then we would have to have perhaps some of the inventory sheets, so that we might check the closing inventory in sufficient manner to prove it accurately, and we would have to have some of the sales slips of the various stores. In the preparation of that profit and loss statement we examined the general ledger register and those other books I mentioned. We examined sales invoices, invoices rendered to the company; we checked the bank accounts, we checked the cancelled vouchers against the cash

(Testimony of L. D. Null.)

disbursed book itself, and reconciled the bank accounts through that method. We checked the cash receipts in comparison with the various bank statements over the period and against the sales reports from the various stores. We checked warehouse sales through the warehouse sales register, and we might have checked other records, but I am afraid I cannot recall all of them now. To examine the books and records which underlie the tendered profit and loss statement, I would say it took three men about four to six weeks. It would take one man about eighteen weeks. I don't think that it would take one man 18 weeks merely to examine the exhibits which are on the table in court here (Government's Exhibits 34 to 39 for identification). We examined many other books and records other than the exhibits which are here in court. In order to prepare the tendered exhibit correctly you would have to examine those other records which are not now here. I don't think that a single mistake in any book and record would make a material difference in the statement now tendered. It probably would not make over \$100.00 difference in the net result.

To my knowledge the summary which we prepared of the books of the Sanders stores does not contain numerous errors. I now refer to the 250 page summary which was tendered the [265] Greenbaum defendants yesterday.

(Testimony of L. D. Null.)

(Thereupon Government's Exhibit 89 was marked for identification, being one page of the 250 page summary heretofore referred to).

I would think that Government's Exhibit 89 for identification is true and correct in its entirety. I wouldn't say that there are several items in that statement which do not coincide with the book entries of the stores corporation because this is a matter of interpretation. I might draw one conclusion and you another. That is not true of my entire audit. To my way of thinking the entire summary is correct in its entirety. In the Civil suit you mention I furnished a tentative schedule to the attorneys upon which to base their complaint and they filed the suit before we were able to recheck the data. The basic books, records and memorandum which underlie that financial statement are not in court, and since the trial opened they have not been in court, that is, not all of them.

Thereupon the document marked Government's Exhibit 89 for identification, being the financial statement referred to, was offered and received in evidence as Government's Exhibit 89, which is as follows:

(Testimony of L. D. Null.)

"UNITED SANDERS STORES, INC.

STATEMENT OF PROFIT AND LOSS	Year 1929
Grocery Sales	816,695.36
Market Sales	179,709.22
	<hr/>
Gross Sales	996,404.58
Merchandise Purchased	1,103,646.32
Less Inventory December 31, 1929	250,726.77
	<hr/>
Cost of Goods Sold	852,919.55
Gross Profit	143,485.03

[266]

Less Operating Expense:

Salaries and Wages	105,955.15
Store and Warehouse Rentals	34,388.66
Taxes	1,594.66
Compensation Insurance	1,348.02
General Insurance	1,534.94
Stationery & Postage	4,982.02
Water, Power & Lights	6,495.51
Laundry	2,715.23
Telephone and Telegraph	1,945.94
Advertising	16,984.81
Repairs and Maintenance	2,154.84
Professional Services	655.00
Traveling Expense	7,031.78
Subscriptions	546.15
Delivery Costs	1,788.25
Official Salaries	6,789.80
Documentary Stamps	245.83
Bags, Paper and Twine	3,235.01
Auto Expense	1,152.37
Unclassified Expense	43,859.67
Cash Short and Over	683.06
Depreciation	16,203.92
	<hr/>
NET LOSS ON SALES	262,190.62
	118,705.59

Plus Other Expense:

Interest	3,473.61
Unclassified Losses	1,531.42
Loss on Bad Checks	811.97
	<hr/>
	5,816.90

(Testimony of L. D. Null.)

Less Miscellaneous Gains:

Earned Discount	9,315.75		
Unclassified Gains	6,321.32	15,637.07	9,820.17
			<u>9,820.17</u>
Total Operating Loss			<u>\$108,885.42</u>

Analysis of Surplus Account:

Operating Loss for 1929			108,885.42
Payment of Dividend on Preferred Stock			25,743.16
Amortization of Organization Expense			10,000.00
			<u>144,628.58</u>
TOTAL SURPLUS DEFICIT			<u>144,628.58</u>

(Refer to Pages 10, 11, 12 and 13)" [267]

The Greenbaum defendants duly objected to the receiving of said exhibit in evidence upon the following grounds: That sufficient opportunity has not been accorded the Greenbaum defendants to examine the sources from which this profit and loss statement was made; that the books, records, data and memoranda that underlie this statement have not been introduced in evidence; that there has been no proper identification of the books and records that are in Court; that there has been no attempt to produce the people who made the entries, or anyone having personal knowledge of the facts, and there has been no showing that such persons are dead, or insane, or beyond the reach of the process of the Court, and that they are not available; and there is no underlying testimony as to the correctness or regularities of the entries from which this profit and loss statement was compiled; that the

(Testimony of L. D. Null.)

original entries are not in Court, and the books and records are shown to not be complete; that there is no showing that the Greenbaum defendants had anything whatsoever to do with the books and records which underlie the profit and loss statement, and that such profit and loss statement is pure hearsay as to each of the Greenbaum defendants; and that said profit and loss statement is not the best evidence; but the Court overruled said objection, to which ruling counsel for the Greenbaum defendants then and there duly excepted.

(Thereupon Government's Exhibit 89 in evidence was read to the Jury by counsel for the Government.)

Thereupon counsel for the Greenbaum defendants duly moved to strike Exhibit 89 from the files, and that the Court instruct the Jury that it was not binding upon the Greenbaum defendants upon the grounds previously stated in the objection to the introduction of the exhibit, but the Court denied said [268] motion, to which ruling the Greenbaum defendants then and there duly excepted.

DIRECT EXAMINATION, CONTINUED

The witness resumed: I have an instrument here which is the profit and loss statement for the nine months ending September 30, 1930, and also a balance sheet of the same date.

Thereupon the profit and loss statement was

(Testimony of L. D. Null.)

marked Exhibit 90 for identification, and the balance sheet Exhibit 91 for identification.

The witness resumed: The profit and loss statement for the month ending September 30, 1930, was compiled from the books of the Stores Company that are here on the table (Government's Exhibits 34 to 39 for identification). It contains a true statement of the profit and loss at that time in accordance with the records.

Thereupon the document marked Government's Exhibit 90 for identification was offered in evidence, but before being received the Court permitted counsel for the Greenbaum defendants to examine the witness upon his voir dire.

VOIR DIRE EXAMINATION

This Government Exhibit 90 for identification was prepared yesterday at the request of the United States Attorney. It was prepared from the records on the table there, and only those records. I would not assume that the books and records on the table are sufficient underlying data to make up a verified profit and loss statement from. In other words, in order to verify, I would say certify, to that statement as to its true and correct condition, those books are not sufficient. [269]

“The COURT: What Books?”

A. Those books right there are not sufficient for me to go and verify every single item that is on Government's Exhibit 90 for identifica-

(Testimony of L. D. Null.)

tion. I would have to go back to cash disbursed and cash received and other fundamental and underlying documents before I could certify to it and say that it is absolutely true and correct in every instance.

I wouldn't say that every single entry would have to be examined in order to verify that statement because of this fact: We heretofore examined every underlying instrument and document and these entries appearing on the books were the entries we examined at the time from which that statement was taken. It is because of my previous acquaintance with the other books and records which are not here that I am able to prepare this tendered statement.

Mr. DOUGHERTY: I ask that the answer be stricken because he has already answered the question.

The COURT: It may be stricken.

Mr. DOUGHERTY: On the ground that the witness did not say what counsel put in his mouth or attempted to put in his mouth. He said that this profit and loss was compiled from those books on the table and these books on the table he has testified IS A SUMMARY of his examination of all the books.

The COURT: You don't mean that?

Mr. DOUGHERTY: These books ARE A SUMMARY, your Honor, of the original entry books.

(Testimony of L. D. Null.)

The COURT: Yes, read the question.

(The record was read by the reporter) [270]

The COURT: The answer may stand.”

The witness resumed: I could prepare that statement from the general ledger that is on the table there because I have already examined those minute underlying documents and those entries. I could prepare it because I have already examined other books and records that are not in Court. The tendered exhibit, the profit and loss for nine months ending September 30, 1930, is based not only on the books which are now in Court but upon other records also. As I stated it would take one man at least three weeks to make an accurate check or verification of this profit and loss statement for the purpose of certifying to it.

An objection was made to the introduction of the document upon the grounds stated to the introduction of the previous Exhibit 89, and upon the further ground that counsel for the Greenbaum defendants did not see this statement until this morning, and the witness testified that it would take three weeks to verify it, and that the only reason that witness was able to prepare it was because of his familiarity with the books and records that are in Court and with the books and records that are not in Court.

Thereupon the following examination was made of the witness by the Court:

“The COURT: Why was it not submitted to counsel yesterday?

(Testimony of L. D. Null.)

A. It was not completed until twelve o'clock last night.

Q. How long had you been working on it?

A. Just before Court in the morning, and all afternoon and most of last night.

The COURT: Well, that is a very good reason why it was not submitted. [271]

Mr. REIN: It is hardly fair it seems to me to have an auditor who has worked on these books 153 days himself and his partner 189, and so on, to sit down and go over the work he has previously done and offer to the jury a profit and loss statement in two pages from books and records, some of which are not here and throw at us in the morning and say, we offer this as evidence as a proved fact.

Mr. DOUGHERTY: May I examine this witness a little further in this regard?

Mr. REIN: We still object to the introduction of the exhibit.

The COURT: I will reserve the ruling on the objection until Mr. Dougherty has completed his examination."

DIRECT EXAMINATION, CONTINUED

These books (Government's Exhibits 34 to 39 for identification) and the original entry books for the last year have been in the State Courts, some of them have been down at Chambers Warehouse for about two years, some of them have gone to No-

(Testimony of L. D. Null.)

gales, some of them are in California. They have been in my custody about five days before this trial began. Those books were all returned from California and Nogales many months ago. Those books marked for identification were all in the office of the Clerk of the Superior Court and had been practically all that time. I took this balance sheet directly from the books there on the table, and the information contained there, plus the information in my previous experience with the underlying records, is what went to make up this balance sheet. Those books which are not here were the records upon which the entries in this book were based. In the preparation of this report I did not go back to the original documents and entries that related to these particular transactions. This Balance sheet was made up strictly from the books that are identified here on the table. I would say that [272] the balance sheet was potentially accurate, but I would not say that I could certify to it or anything like that now without checking in more detail in order to be honest with myself. By potentially accurate I mean that there would only be a matter of a few dollars difference—two or three hundred dollars either way.

Thereupon the Government offered and there was received in evidence Profit and Loss Statement for the nine months ending September 30, 1930, which was marked Government's exhibit 90, which is as follows:

(Testimony of L. D. Null.)

"UNITED SANDERS STORES, INC.

PROFIT AND LOSS STATEMENT NINE MONTHS ENDED 9/30/30

Sales

Retail Grocery	\$1,029,675.94
Retail Meats	293,921.72
Wholesale	351,033.80

Total Sales

\$1,674,631.46

Cost of Sales

Retail Grocery	842,076.42
Retail Meats	223,654.48
Wholesale	331,294.54

Total Cost of Sales

1,397,025.44

Gross Profit from Sale

277,606.02

Expenses:

Bags, Carton, Papers	8,310.14
Salaries & Wages	176,839.93
Rents	46,524.69
Repairs & Supplies	6,450.53
Laundry	3,588.76
Royalties	6,512.85
Heat, Light & Power	11,489.33
Tel. & Tel.	3,225.23
Misc. Expense	1,104.50
Advertising	19,876.13
Auto. Exp.	3,592.73
Stationery & Office Supplies	4,036.17
Audit & Legal	2,521.18
Taxes	9,273.79
Insurance	6,124.74
Bad Debts	116.54
Dues & Subscriptions	1,362.20
Travel	4,249.74
Misc. Administration	556.20
Documentary Stamps	1,499.69
Depreciation	14,917.50

Total Expense

332,172.57

(Testimony of L. D. Null.)

Net Loss Before Other Income & Expense		\$	54,566.55
Other Income			
Interest	161.51		
Discount	8,492.75		
Freight & Delivery	460.32		
	<hr/>		
			9,114.58
Other Expenses			
Cash Discount allowed	571.34		
Interest Paid Miscl.	2,196.55		
Interest Paid Bonds	2,917.15		
P & L Items	3,779.64		
Cash Short	1,128.54		
	<hr/>		
		10,593.22	1,478.64
		<hr/>	<hr/>
Net Loss to Surplus			56,045.19
Profit & Loss Items			
Loss in Merchandise Inventory	5,678.65		
Miscl. Items	67.29		
	<hr/>		
		5,745.94	
Less: Sundry Credits	2,066.30		
	<hr/>		
			3,779.64."

The Greenbaum defendants duly objected to the introduction of Government's Exhibit 90 in evidence, upon the following grounds: That sufficient opportunity has not been accorded the Greenbaum defendants to examine the sources from which this profit and loss statement was made, they having just now seen the statement for the first time; that there has been no proper identification of the books and records that are in Court; that there has been no attempt to produce the people who made the entries, or anyone having personal knowledge of the

(Testimony of L. D. Null.)

facts, and that there has been no showing that such persons are beyond the reach of the process of the Court; that there is no underlying testimony as to the correctness or regularity of the entries from which this profit and loss statement was compiled; that the original entries are not in Court and the books and records are shown to be incomplete; that there is no showing that the Greenbaum defendants had [274] anything whatsoever to do with the books and records which underlie the profit and loss statement; and that such profit and loss statement is pure hearsay as to each of the Greenbaum defendants, and is not the best evidence; but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

At this juncture the Government offered the balance sheet in evidence and permitted further voir dire examination by the Greenbaum defendants.

VOIR DIRE EXAMINATION

As I stated, Government's proffered exhibit, the balance sheet of September 30, 1930, was prepared by me yesterday and the figures which it contains are found in the books which are now in Court. I could make it because I knew from a previous understanding of the case and the previous understanding of the books and records what the other books and records not in Court showed. The books and records now in Court would not be sufficient

(Testimony of L. D. Null.)

for anybody other than myself with my previous knowledge to certify to the balance sheet of September 30, 1930. It would take, as I stated, three weeks for one man to check Government's Exhibit 89 and this balance sheet of September 30, 1930.

“The COURT: Let me ask a question. Did you verify the accounts in the books here marked for identification from other documents and data that was available to you, data of the organization?

A. Yes, at the time that audit was made that was all done.

Q. You verified these items that are in these books?

A. Yes. [275]

Q. You have taken this profit and loss statement from the items in these books which has been previously verified?

A. Yes.

Mr. REIN: Q. But which books are not in Court now?

A. All of them are not in Court now.

The COURT: Do you offer it in evidence?

Mr. DOUGHERTY: Yes, your Honor.”

Thereupon the document known as the Balance sheet of September 30, 1930, was offered and received in evidence as Government's Exhibit 91, of which the following is a photostatic copy: [276]

(Testimony of L. D. Null.)

The Greenbaum defendants duly objected to the receiving of said exhibit in evidence, upon the following grounds: That sufficient opportunity has not been accorded the Greenbaum defendants to examine the sources from which this balance sheet was made, they having just now seen the statement for the first time; that there has been no proper identification of the books and records that are in Court; that there has been no attempt to produce the people who made the entries, or anyone having personal knowledge of the facts, and that there has been no showing that such persons are beyond the reach of the process of the Court; that there is no underlying testimony as to the correctness or regularity of the entries from which this balance sheet was compiled; that the original entries are not in Court and the books and records are shown to be incomplete; that there is no showing that the Greenbaum defendants had anything whatsoever to do with the books and records which underlie the balance sheet; and that such balance sheet is pure hearsay as to each of the Greenbaum defendants, and is not the best evidence; but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

Thereupon, and after the exhibit was received in evidence, the Greenbaum defendants moved that it be stricken from the files and the jury instructed to disregard it, upon the same grounds as stated

(Testimony of L. D. Null.)

in the objection to its introduction, which motion was by the Court denied, to which ruling the Greenbaum defendants then and there duly excepted.

Thereupon Government's Exhibits 90 and 91 were read to the jury.

The witness resumed: Referring to Government's Exhibit 91, there appears under deferred assets, organization expense \$304,644.88, and concessions of \$151,000.00, of intan- [279] gible items, that is what you would call them, of no value whatsoever. Those are termed as assets.

“Mr. DOUGHERTY: If those assets are taken out, what would be the total deficit at the time?”

To which question counsel for the Greenbaum defendants duly objected upon the ground that the statement speaks for itself, but the Court overruled the objection, to which ruling the Greenbaum defendants then and there duly excepted.

Taking out organization expenses and concessions which are not recoverable assets and carrying them over to the deficit account you would have a deficit then of about \$679,000.00. The balance sheet for 1930 includes the dividends of 1929 as well as the dividends of 1930. The balance sheet of 1930 includes all transactions of the company up to that date. In 1929 dividends in the amount of \$25,743.16

(Testimony of L. D. Null.)

were paid and in 1930 dividends in the amount of \$25,200.02 were paid, and they are both reflected in the deficit appearing in this balance sheet ending September 30, 1930. The total stock issued, common and preferred, from the inception of the organization until September 30, 1930, in dollars and cents amounts to \$1,282,014.50. The corporation received approximately \$800,000.0 in cash out of that. The commissions paid out of that were in the neighborhood of \$205,000.00 from January 1st, 1929, to September 30th, 1930.

Thereupon the capital stock ledger was marked as Government's Exhibit 92 for identification.

The witness resumed: I have examined the capital stock ledger and I am thoroughly familiar with it. I saw that book at the general offices of the Stores Company shortly after the appointment of the first receiver. I examined the stock certificate stubs and the stock journal in preparing my report. I don't know where they are now, but I have searched [280] high and low for them but haven't been able to locate them. I made the search at the request of the United States Attorney's office.

“Q. Calling your attention to this capital stock ledger again, did you verify the entries in there with the original entries, the stubs?”

The Greenbaum defendants objected to this question upon the same grounds included in the ob-

(Testimony of L. D. Null.)

jection to Government's Exhibits 90 and 91, and upon the further grounds that the original records and stubs were hearsay as to the Greenbaum defendants, but the Court overruled said objection, to which said ruling the Greenbaum defendants then and there duly excepted.

I verified the entries in the capital stock ledger with the original records, the stubs and the stock journal.

CROSS EXAMINATION

Government's Exhibit 92 for identification was just brought into the Court room this afternoon before Court convened, and it was the first time that it has been in this Court. The balance sheet of September 30, 1930, purports to cover the entire transactions of the Stores Company from its inception to the date of the balance sheet. The item of fixtures and equipment in the amount of \$198,899.26 included the automobiles belonging to the Company and the Packard automobile which the Company furnished to Mr. A. E. Sanders. I couldn't tell you what value that Packard automobile was carried at from this statement because I did not go back and analyze the fixtures and equipment account in detail. I do not know how many automobiles or trucks the Company had in addition to Mr. Sanders' Packard, nor do I know at what figure I carried any of those [281] items when I prepared Government's Exhibit 91, which is

(Testimony of L. D. Null.)

the balance sheet of September 30, 1930. I do not know the condition nor the re-sale value or actual market value of the rolling stock of the Company, that is the automobiles, which are reflected in this report as of September 30, 1930, and I wouldn't be qualified to answer that question. I never saw any of the items of the equipment that went into this report as I took it at book value which was the cost value. In preparing this balance sheet, Government's Exhibit 91, it was necessary for me to refer to the general audit made at the time of the appointment of the receiver in the State Court because that audit represents an examination in detail of all the records. It would not have been impossible to prepare this balance sheet, had I not made such audit. I could still prepare it. I would not vouch for the accuracy of that balance sheet in the absence of the missing books, and in the absence of my experience in the first audit. The items of concessions have no value. At the time that the 151,000 shares of stock were issued to Mr. A. E. Sanders by the order of the Corporation Commission no stock had been sold to the public and there was only outstanding the three original qualifying shares. Mr. A. E. Sanders transferred the franchise but I would not say from an accounting standpoint that the franchise was equal to the 151,000 shares which Mr. Sanders received. I don't think there was any resolution fixing the value of the franchise as far as the stock was concerned.

(Testimony of L. D. Null.)

I see no record of it in my audit because we copied the pertinent minutes.

If there was no paid-in capital and the stock was of no par value the franchise on the books would balance with the stock that the Company had given for it, and the books would not be in balance any other way, as that is a regular standard of bookkeeping procedure and exactly the way we would [282] set it up. I said that the franchise in question had no value whatsoever, but I couldn't answer the question as to whether or not the franchise did have a value at the time the original entry setting it up in the books was made. I would say that the franchise had no value on September 30, 1930. In the preparation of that balance sheet or statement, since the Company was no longer operating under the franchise, I would say that I prepared my statement on the theory the franchise was worthless because the Company was not operating under it. It had no recoverable value to the stockholders. I knew that the management of the United Sanders Stores had cancelled the franchise voluntarily, and that it was no longer existing as a present operating right, and naturally it would have no value as an asset. I am not sure but what the franchise might have been cancelled in 1931, a year later from the time I now fix. I cannot remember every minute transaction that I examined, as that would be impossible. At the time I made the audit

(Testimony of L. D. Null.)

I discovered the cancellation of the franchise to be a fact, but I don't remember the exact date, I would have to go back and refresh my memory on that. The fact that I remember that the Stores Company received about \$800,000.00 in cash was because that is a simple matter to figure out.

In an operating, going concern such as the Sanders Stores a franchise concession has value when it is in use. If the franchise was owned by the Company I would say it would have some value, but I couldn't say a substantial value. I don't think the franchise was ever assigned. As to the value of the franchise I am afraid I could not answer, as I have already said, it had no value and I will have to stick to that. About twelve or fifteen thousand dollars in royalties were paid to Clarence Saunders under the franchise and I am sure he [283] accepted it. The franchise had a loss to that extent. I wouldn't say it had a value of \$151,000.00 in my belief. I draw my conclusions from an audit of the Company and not from the transactions of the Company.

The profit and loss statement, Government's Exhibit 90, only covers from January 1, 1930, to September 30, 1930. The item of traveling expense on the profit and loss statement of \$7,031.78 I vouch for as correct, but I could not give you the details without going into the books and records. The greater portion of it I believe was Mr. Sanders' traveling expenses. It would probably take me a

(Testimony of L. D. Null.)

day to go into the books and analyze them, and tell you who entailed those traveling expenses. The sources of my analysis would be limited to these books and records in Court. I can take it right from these but I could not find the supporting data or the original vouchers here in Court. The original entries are here now. Those are the original entries. In order to check the truth of the entries in those books anyone else but myself would have to examine the original records, but I have already done that so I can vouch for their truth. When I tell you that those underlying vouchers and records coincide with the book entries I am presuming to ask you to take my word for it. The insurance item of \$6,124.74 appearing in the profit and loss statement for the nine months of 1930, I could not tell you whether it covered the personal life insurance of A. E. Sanders or not. Referring to pages 123 and 125 of the audit which is an account with A. E. Sanders, I don't think that is under the caption "insurance" in the general ledger. I cannot remember the details of every account without going back and doing a little checking. I prepared this September 30, 1930, statement last night as the result of my examination of a previous audit and I cannot now tell you whether Mr. A. E. Sanders' personal [284] insurance was carried in that item or not, at any rate I would consider that \$6,000.00 of insurance a small transaction considering the transactions of the company, but would not

(Testimony of L. D. Null.)

consider it a minute detail. It has been so long ago that I cannot remember whether the company was beneficiary in those policies or not, but I don't believe so. There is also some A. E. Sanders life insurance reflected in the profit and loss statement for 1929. I don't know the amount nor the name of the company issuing the policies, nor who was the beneficiary. The item of February 15, 1929, showing a premium payment to the Missouri State Life Insurance Company by check No. 9 was charged to A. E. Sanders in our audit. We ascertained the ultimate facts about that insurance at the time we made the audit, but I cannot tell you about it now. I am not a certified public accountant. I spent about one-third of the total number of man days to prepare and complete this audit. I was not the auditor employed by the State Court to do this, my partner Mr. Wood was. I did not certify to the truth of the final audit because I didn't sign it. It was certified to by Mr. Wood. We auditors assign our work, and one of us did one part and another the other part. At the end of each audit Mr. Wood and I sat down and consulted as to what transpired during the day and checked each other's work, and at the completion of the work everything was fitted in daily. I checked his work, and he checked mine, and both of us checked Mr. Canning's work, as also the other auditors employed. The other auditors in turn did not check my work. We check each other's work as a

(Testimony of L. D. Null.)

matter of course, and it is necessary to check the original entries against the original underlying detail, as that is the only proper way to make an audit. In checking each other over we don't check everything in detail. Mr. Wood and myself [285] examined every record of the United Sanders Stores before we were through with the audit. We did not make exactly the same examination, but arrived at the same results.

There were sufficient missing records to require us to reconstruct some of the accounts from the source of original entry from which the general ledger is made. We found all the books of original entry. Exhibit 91 was made from books now in Court.

The cost of obtaining original capital is carried as a deferred asset and is carried under the caption "assets". This kind of an asset is usually amortized. I wrote off the \$205,000.00 of commissions on the date of the receivership. I had nothing whatsoever to do with the books and records of the stores corporation at any time it was a going concern, or until it fell into the hands of the State Receiver. The only money this corporation has gotten was through the sale of stock and if the company had been efficiently managed with \$800,000.00 in cash it might have operated with a profit. I don't mean to indicate to the jury that the payment of commissions for the sale of stock was wrong.

(Testimony of L. D. Null.)

At the time the company went into receivership there were only \$7,609.25 worth of claims presented by the creditors. But according to the books and records as of March 19, 1931, when the receiver was appointed the general accounts payable were almost \$19,000.00. The company had in operation 19 or 20 stores, and at that time had \$5,600.00 in cash in the bank. Of this \$19,000.00, it was not all immediately payable, some of it would probably be due in thirty days. I have never owned a grocery store or any other kind of a store. I suppose that if Sears-Roebuck was to enfranchise someone in Arizona to use its name it would be worth millions. The same might be true of Montgomery-Ward. Matters of that kind cannot be computed, but [286] I still say the Clarence Saunders franchise was worth nothing. That is my opinion. At the beginning of the company it might have been valuable to a certain extent, but not in the amount set forth in the books. As I stated the books of original entry are in Court, but the original documents back of the books of original entry are not in Court. I do not mean to say that all the books of original entry are in Court, there are probably one or two missing. The invoice register I know is not here. The accounts receivable is not here, but it is not a book of original entry but a subsidiary ledger. The accounts payable book is not here, but it is also not a book of original entry. A book of original entry is a book where the first permanent entry of a transaction

(Testimony of L. D. Null.)

is made. From an examination of these books and records that are now in Court, Government's exhibits 34 to 39 for identification, I could not certify to an audit based upon those books as they stand.

RE-DIRECT EXAMINATION

Mr. Wood and I received about \$1,300.00 each for the audit which we made as that is all they could afford to pay us.

Whereupon the District Attorney asked permission to reopen the direct examination, which was granted.

The Greenbaum Brothers and Bond and Mortgage Corporation were to receive twenty percent of the total selling price of the stock. They were to receive their twenty percent upon the payment of forty percent. If they sold \$100.00 of stock and \$40.00 was paid down, the Greenbaum brothers received \$20.00 right now, and if the subscription was **not paid in full** they still got the \$20.00. [287]

CROSS EXAMINATION

If a subscriber purchased \$100.00 worth of stock and paid \$40.00 down the Greenbaum brothers kept \$20.00 and the Sanders Stores got the other \$20.00, and if the subscriber forfeited on his contract the Sanders Stores kept the \$20.00 they received, and did not issue any stock, and the company was \$20.00 ahead. There *wre* not so very many of these in-

(Testimony of L. D. Null.)

stances. According to the records the Bond and Mortgage Corporation sent into the general offices they paid their salesmen fifty percent of the commission the Greenbaums received. I am not positive but what it might have run five, ten or fifteen percent of the total sales in some instances, and that in some instances the Greenbaums only received five percent of the total commission.

TOM H. BRANDT,

recalled as a witness on behalf of the Government testified:

I started with the Stores Company September 15, 1929, and left the early part of August 1930. Prior to coming on the witness stand today I examined this book known as the capital stock ledger, Government's Exhibit 92 for identification. During the time I was connected with the company that book was under my supervision and control. In regard to the entries made therein during that time they are correct. This book was kept, while I was there, in the regular course of business of the company, and as one of its records. Referring to the letter you show me dated June 18, 1930, I saw the letter before in the office of the Stores Company on or about the date it bears. This letter emanated from the office of the Bond and Mortgage Company.

Thereupon the Government offered the letter in [288] evidence, and it was received and marked

(Testimony of Tom H. Brandt.)

Government's Exhibit 94 in evidence, which abstracted to the issue is as follows:

Letter from Bond and Mortgage Corporation to United Clarence Saunders Stores, Inc., dated June 18, 1930, signed by M. Loveland, Assistant Secretary, instructing that certificate No. 965 for one share of preferred stock be transferred to Ethan Allen Whipple; to register debenture No. C-51 in the amount of \$100.00 in the name of George Mutz; to transfer enclosed certificate No. 1343 for ten shares of common stock from Mrs. Minta Beebe to George Mutz; to issue 5 shares of common stock to Ethan Allen Whipple, and charge the certificate of the Bond and Mortgage Corporation on hand.

The witness resumed: Pursuant to the instructions in this letter, and upon its receipt, the Stores Company issued stock as a result of such letters as these, which letters were in effect orders or instructions to make certain issuances or certain transfers of stock. The stock was issued on the written order of the Bond *ad* Mortgage Corporation by means of communications such as this letter. This particular letter would call for the issuance of five shares of common stock to Ethan Allen Whipple, and that stock would be deducted or charged against the certificate which we had on hand belonging to the Bond and Mortgage Corporation. As I stated, this was in effect a transfer of stock belonging to the

(Testimony of Tom H. Brandt.)

Bond and Mortgage Corporation to Ethan Allen Whipple. The Stores Company received no money for that transfer or sale—it would just be a transfer of stock, no money involved in that transaction. While I was in charge down there we received the letter shown me dated June 17, 1930, under the same circumstances that I have just testified to in regard to the prior letter Government' Exhibit 94 in evidence.

Thereupon there was offered and received in evidence [289] the letter of June 17, 1930, being Government's Exhibit 93-B for identification, which was admitted in evidence as Government's Exhibit 95, which abstracted to the issue is as follows:

Letter from Bond and Mortgage Corporation, dated June 17, 1930, addressed to United Clarence Saunders Stores, Inc., signed by M. Loveland, instructing that "it issue the following common stock certificates and deduct from the Bond and Mortgage certificate on hand". Then follow seven names, totalling 345 shares of the common stock. The letter further instructs "also please transfer the enclosed certificate to the Bond and Mortgage Corporation: Cert. No. 1333 issued to Mrs. Minta Beebe . . . 2-P".

The Greenbaum defendants objected to the admission of said letter in evidence upon the grounds that such letter was incompetent, irrelevant and immaterial in that it failed to prove or sustain any

(Testimony of Tom H. Brandt.)

of the material allegations of the indictment, but the Court overruled said objection, to which ruling counsel for the Greenbaum defendants then and there duly excepted.

The witness resumed: Examining Government's Exhibit 92 for identification, the Capital Stock Ledger, there is an entry in there that coincides with the order given in Government's Exhibit 95, and under the date of June 20, we issued certificate No. 1705 for 20 shares of common stock to William Bianconi.

Thereupon the Government offered a sheet from Government's Exhibit 92 for identification in evidence, which was duly objected to by the Greenbaum defendants and the Court thereupon undertook the examination of the witness.

EXAMINATION BY THE COURT

That transaction was during the time I was employed there and was under my supervision. I did not make the entries myself in my own handwriting, one of the clerks [290] under me made the entry under my supervision. These transactions were checked by me in detail, not only the cash accounting, but as to the correctness of the name, certificate numbers, and in fact the stock certificates themselves will bear my signature showing my approval.

Thereupon the sheet was offered and received in

(Testimony of Tom H. Brandt.)

evidence as Government's Exhibit 96, which abstracted to the issue is as follows:

Account of William Bianconi in capital stock ledger, showing transfer of two shares of common stock on June 20, 1930, and August 5, 1930, totalling 60 shares, represented by certificates issued, Nox. 1705 and 1961.

The Greenbaum defendants duly objected to the introduction of said exhibit on the ground that there was no identification of the book such as required by law by the person who made the entry, and that there was no proof that the person who did make the entry is unavailable, and on the further ground that the exhibit is hearsay so far as the Greenbaum defendants are concerned, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

Thereupon there was offered and received in evidence the second entry on the ledger sheet in the name of the Bond and Mortgage Corporation, which counsel stipulated could be read into the record without waiving any rights to the other objections to it, which was read into the record as follows:

“The entry is dated sixth month, twentieth day, journal folio 70, Certificate No. 23, number of shares 20”.

The Greenbaum defendants duly objected to the receipt of said exhibit in evidence upon the ground

(Testimony of Tom H. Brandt.)

that it was incompetent, irrelevant and immaterial, and upon the ground that there was no proper foundation laid for its admission, and that upon [291] the further ground it was hearsay as to the Greenbaum defendants, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

Thereupon Government's Exhibit 95 was read to the Jury by counsel for the Government.

The witness resumed: This letter was turned over to our bookkeeper or stenographer, stock certificates were typed out showing the name and the amount of the shares and the numbers, the certificate numbers were inserted in the journals from which we posted into the capital stock ledger. An account was opened for each person buying stock, and all those certificates were issued as ordered here. To offset such issuances we made a counter entry charging against the Bond and Mortgage Corporation. The Stores Company received no consideration for that stock at that time.

Thereupon it was stipulated that the stock did not belong to the Stores Company but belonged to the Bond and Mortgage Corporation.

The witness resumed: The letter you show me dated July 1, 1930, was received under similar circumstances as the last two letters that I have identified and testified to, and came from the same source.

(Testimony of Tom H. Brandt.)

Thereupon the letter was offered and received in evidence as Government's Exhibit 97, which abstracted to the issue is as follows:

Letter from Bond and Mortgage Corporation to United Clarence Saunders Stores, Inc., dated July 1, 1930, signed by M. Loveland, Assistant Secretary, instructing the company to issue 200 shares of common stock to Mrs. Leonora K. Smith, and deduct it from Bond and Mortgage certificate on hand.

The witness resumed: On or about the date of the letter there was a transfer of the stock mentioned therein by [292] the Bond and Mortgage Corporation in the amount of 200 shares of common stock to Leonora K. Smith. Insofar as the bookkeeping is concerned the same procedure was carried out at the time of this last transfer as I testified to in regard to the previous transfer of the last letter. Referring to the letter you show me dated July 2, 1930, I will say that that was received, while I was down there in the employ of the Stores Company, under the same circumstances as the prior letter and it came from the same source.

Thereupon the letter was offered and received in evidence as Government's Exhibit 98, which abstracted to the issue is as follows:

Letter from Bond and Mortgage Corporation, to United Clarence Saunders Stores, Inc., dated July 2, 1930, signed by M. Loveland, As-

(Testimony of Tom H. Brandt.)

sistant Secretary, instructing the company to issue 50 shares of common stock to J. E. Matteson, and deduct from Bond and Mortgage certificate on hand.

The Greenbaum defendants duly objected to the admitting of said exhibit in evidence upon the grounds previously stated, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

Whereupon the Court stated that in order to shorten the record without repeating the same objection all the time he would consider that the same objection would be made to each letter and that the same ruling would be made thereon, and the same exception noted and allowed.

Whereupon the Court stood at recess (November 16th, 1934, 5:00 o'clock P.M.) until 10:00 o'clock A. M. November 20th, 1934, and in recessing addressed defendants' counsel, and said in part: "We are going to recess until next Tuesday. That will give you an opportunity to examine those books."

Whereupon, on November 20th, 1934, the trial re- [293] sumed, and the following proceedings were had:

A letter of July 14, 1930, was marked as Government's Exhibit 93-F for identification.

The witness resumed: That letter was received by the Clarence Saunders Stores while I was in

(Testimony of Tom H. Brandt.)

charge of the office on or about the date it bears, and from the same source as the letters that I testified about Friday.

Thereupon the letter was offered and received in evidence as Government's Exhibit 99, which abstracted to the issue, is as follows:

Letter from Bond and Mortgage Corporation to United Saunders Stores, Inc., dated July 14, 1930, signed by M. Loveland, Assistant Secretary, enclosing their check in the amount of \$60.00 covering balance due on subscription of Franklin M. Green, with instruction to issue his certificates; also enclosing common stock certificates with instructions to issue as follows:

Cert. No. 1792 for 25 common to Franklin M. Green

Cert. No. 1750 for 200 common to Eva B. Pierce.

Also instructing company to transfer the following preferred stock to Bond and Mortgage Corporation:

Cert. No. 1013 for 2 shares preferred, issued to Franklin M. Green.

Cert. No. 1014, for 3 shares preferred, issued to Franklin M. Green.

Cert. No. 161 for 2 shares preferred, issued to Robert L. Morton.

The witness resumed: Pursuant to the request contained in the letter I credited \$60.00 to the ac-

(Testimony of Tom H. Brandt.)

count of Franklin M. Green, and we issued new certificates for certificates 1792 and 1750 turned in. The Stores Company did not receive any money consideration or payments for these certificates or for that transfer.

Thereupon a letter dated July 21, 1930, was marked Government's Exhibit 93-G for identification.

The witness resumed: That letter was received on [294] *on* about the date it bears by the Stores Company, and from the same source as the last letter I testified to.

Thereupon the letter was offered and received in evidence as Government's Exhibit 100, which abstracted to the issue is as follows:

Letter from Bond and Mortgage Corporation to United Clarence Saunders Stores, Inc., dated July 21, 1930, signed by M. Loveland, Assistant Secretary, instructing the company to transfer Certificate No. 968 for 16 shares preferred to W. Nelson Mayer, and to transfer the following common stock from the certificates enclosed in the letter:

W. Nelson Mayer	—	8 shares
Elizabeth Inman	—	30 shares
Mrs. John Freitag	—	150 shares.

The Greenbaum defendants duly objected to the introduction of Government's Exhibit 100, upon

(Testimony of Tom H. Brandt.)

the grounds that it was incompetent and irrelevant, and did not tend to prove any offense charged in the indictment, the indictment charging that the stock they sold was out of the 35,000 shares, and the evidence affirmatively shows that no stock was ever sold out of those shares; and further there was no proper foundation laid for the introduction of this exhibit, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

The witness resumed: As an employee of the company I followed the instructions contained in that letter and made the transfers as requested.

Thereupon a letter dated July 22, 1930, was marked Government's Exhibit 93-II for identification.

The witness resumed: This last letter was received in the regular course of business on or about the date it bears, the same as the letters I have previously testified to. The letter was offered and received in evidence as Government's Exhibit 101, which abstracted to the issue is as follows:

[295]

Letter from Bond and Mortgage Corporation to United Clarence Saunders Stores, Inc., dated July 22, 1930, signed by M. Loveland, Assistant Secretary, instructing the company to transfer 150 shares of common stock, represented by three certificates numbered 1767-68-69, to Catherine Ryan.

(Testimony of Tom H. Brandt.)

The Greenbaum defendants duly objected on the same grounds assigned to Exhibit 100, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly accepted.

The witness resumed: Upon the receipt of this letter, as an employee of the company I made those transfers requested in that letter.

EXAMINATION BY THE COURT

Those were orders to transfer certain certificates of stock from shares of stock owned by the Bond and Mortgage Corporation. They had a certificate, or certificates—an aggregate number of shares from which they caused to be transferred certain other certificates to various purchasers. It was not an original sale by the Stores Company to these particular parties named, but merely a transfer. They were original sales from the Greenbaum Brothers to the purchasers. The certificate was originally given to the Greenbaums by A. E. Sanders and was a transfer of their stock to the parties named in the letter. The stock I refer to was common stock, not preferred.

DIRECT EXAMINATION, CONTINUED

Thereupon a letter dated July 23, 1930, was marked Government's Exhibit 93-I for identification.

The witness resumed: This last letter was received under circumstances similar to those I have

(Testimony of Tom H. Brandt.)

testified to in regard to the other letters. The letter was offered and re- [296] ceived in evidence as Government's Exhibit 102, which abstracted to the issue is as follows:

Letter from Bond and Mortgage Corporation to United Clarence Saunders Stores, Inc., dated July 23, 1930, signed by M. Loveland, Assistant Secretary, enclosing Certificates 1748, 1812, 967, 966, 967, 963, 650 and 707, totalling 77 shares, to three purchasers.

The Greenbaum defendants duly objected to the introduction of said exhibit upon the grounds previously assigned, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

The witness resumed: I made the transfers requested in that letter.

Thereupon a letter dated July 26, 1930, was marked Government's Exhibit 93-J for identification.

The witness resumed: This last letter was also received on or about the date it bears, under circumstances similar to those that the other letters were received, and from the same source.

Thereupon there was offered and received in evidence the letter, marked Government's Exhibit 103, which abstracted to the issue is as follows:

(Testimony of Tom H. Brandt.)

Letter from Bond and Mortgage Corporation to United Clarence Saunders Stores, Inc., dated July 28, 1930, signed M. Loveland, Assistant Secretary, enclosing and authorizing transfer of the following certificates, totalling 310 shares of common stock, to four purchasers, certificates being numbered 1763, 1770, 1754 and 1755.

The same objection was duly made by counsel for the Greenbaum defendants, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

The witness resumed: Upon receipt of that letter the transfers were made.

Referring to Government's Exhibit 92 for identification, that is the account of the Bond and Mortgage Corporation [297] in the capital stock ledger, and shows the detail of the certificates issued to them and the certificates cancelled by them. The entries on the first six pages, up to the time I left the company in August 1930, were made by me or under my supervision and direction and are correct as to the transactions they purport to show.

Thereupon the nine pages were marked as Government's Exhibit 94 for identification.

CROSS EXAMINATION

In my statement to the Court I did not intend to say that the certificates referred to in the letters about which I have just testified were given to the

(Testimony of Tom H. Brandt.)

Greenbaum defendants or to the Bond and Mortgage Corporation for no consideration. I intended to say that they had certain certificates transferred from A. E. Sanders, which they held there and from which they drew certain shares of stock. These various transfers of stock are withdrawals from certificates previously issued to either Greenbaum Brothers or the Bond and Mortgage Corporation from A. E. Sanders' stock. I didn't mean to say that they were causing these transfers to be made to customers or themselves out of shares of stock to which they were not entitled. I wouldn't know whether they were entitled to them or not. "They were entitled to them in this respect—" I do not intend to say that the transferred shares mentioned in these letters were not paid for by the Greenbaums. As a matter of fact they were paid for. I have heard of a verbal contract, but I have never seen a written one, between A. E. Sanders and the Greenbaum defendants or the Bond and Mortgage Corporation whereby Mr. Sanders was to give them a certain number of shares of his personally owned stock after they had [298] sold so many shares of stock of the company. I left the employ of the company in the early part of August 1930, but I don't recall the exact date, but I believe the minute books will show it was August 7, 1930. I don't have any particular reasons, although I may have reasons, for remembering that date. I don't recall just now. I was not accused of anything by

(Testimony of Tom H. Brandt.)

Mr. Sanders on August 7th. I was accused of something on August 7th, by somebody, although after August 7th I had no further connection with the Stores Company by any of its names. As a matter of fact instead of resigning I was discharged.

At this juncture counsel for the Greenbaum defendants stated that they were waiting for Mr. Null to produce certain exhibits which he had gone after, and which were withdrawn from other files, and that they would desire to cross-examine this witness further. The Court announced that "you had better clear it up with what you have" and the defendants' counsel announced no further cross-examination.

G. C. PARTEE,

recalled as a witness on behalf of the Government, testified:

After Mr. Brandt left the employ of the company in August 1930, my duties after that time were that I was Secretary-Treasurer and had charge of the office. Referring to Government's Exhibit 93-K for identification, the letter dated November 4, 1930, I will say it was received by the company while I was employed there as Secretary. It was received from the Bond and Mortgage Corporation on or about the date it bears.

(Testimony of G. C. Partee.)

Thereupon the letter was offered and received in evidence as Government's Exhibit 105, which abstracted to the issue is as follows: [299]

Letter from Bond and Mortgage Corporation to United Clarence Saunders Stores, Inc., dated November 4, 1930, signed by M. Loveland, Assistant Secretary, reading as follows:

“Please transfer the enclosed certificate to Effie A. Curly, 315 W. Phoenix, Flagstaff, Arizona. Cert. 1930 100-C”

The Greenbaum defendants duly objected to the introduction of such letter in evidence upon the grounds that it did not tend to prove any offense charged in the indictment, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there excepted.

The witness resumed: I followed the instructions contained in that letter and made the transfer requested. The letter you show me dated November 10, 1930, was received on or about the date it bears, under circumstances similar to the prior letter I have mentioned.

Thereupon the letter was introduced in evidence as Government's Exhibit 106, which abstracted to the issue is as follows:

Letter from Bond and Mortgage Corporation to United Clarence Saunders Stores, Inc., dated November 10, 1930, signed by M. Loveland, As-

(Testimony of G. C. Partee.)

sistant Secretary, enclosing certificates 1940, 1931, 1174 and 1418, authorizing the transfer to two purchasers; total certificates equal 160 shares common stock.

The Greenbaum defendants duly objected to the introduction of said letter upon the same grounds previously mentioned, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

The witness resumed: Upon the receipt of that letter I made the transfers requested.

Examining Government's Exhibit 104 for identification, those latter entries and figures in the last period appear to be my figures. All those entries from some time in August, when Brandt left the company, were made under my jurisdiction. The figures on the last three sheets are mine or were made [300] under my direction, and they correctly represent the transactions they purport to show.

Thereupon the Government offered and there was received in evidence Government's Exhibit 104 for identification, being part of Government's Exhibit 92 for identification as Government's Exhibit 104, which abstracted to the issue is as follows:

Account of Bond and Mortgage Corporation in capital stock ledger, consisting of 17 pages (contained in Government's Exhibit 92 for identification) showing cancellation and re-is-

(Testimony of G. C. Partee.)

suance of various certificates of common stock owned by Bond and Mortgage Corporation, between December 18, 1929, and February 14, 1931, being part of the stock transferred to it out of A. E. Sanders' 151,000 shares; also showing detail of certificates issued to it.

The Greenbaum defendants duly objected to the introduction of Exhibit 104 in evidence upon the ground that it was incompetent, irrelevant and immaterial, and does not prove or tend to prove any of the allegations of the indictment, and does not disclose any fact; and upon the further ground that the matter contained in said exhibit was hearsay as to the Greenbaum defendants, as there was no connection shown between the entries in this book and the Greenbaum defendants, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

The witness resumed: Referring to this capital stock ledger, there are two sheets, numbered 1 and 2, going back to May 24, 1929, that show the Greenbaum Brothers stock account.

Thereupon the two sheets mentioned, being part of Government's Exhibit 92 for identification, were marked Government's Exhibit 107 for identification.

The witness resumed: The entries on this exhibit 107 for identification, were not made by me.

(Testimony of G. C. Partee.)

The only entries made directly by me are the last three entries on the [301] last page. The entries prior to that were not made under my direction while I was in charge of the books. That was back beyond my time. The entries on this exhibit which were made by me are correct and show the transactions they purport to show.

CROSS EXAMINATION

In identifying the entries about which I have spoken, I have a knowledge of the action which was taken with reference to the letters and the transfer of the certificates. I have no knowledge of any transaction between the Bond and Mortgage Corporation and any certificate holder or purchaser. Offhand, I am unable to say from what source these certificates came but I can say that the certificates were issued to the Bond and Mortgage Corporation or Greenbaum Brothers, whichever the case might be, and that they were transferred, at least most of them were, from the Greenbaum brothers to the individuals named in the letters. The Bond and Mortgage Corporation or Greenbaum Brothers no doubt bought some of the certificates. I wouldn't know whether they actually paid for them and that the purpose of buying them was to support the market. I simply know that there were some transactions where stock was transferred from individual stockholders to the Greenbaum brothers and to the Bond and Mortgage Corporation, and

(Testimony of G. C. Partee.)

subsequently were transferred to other purchasers. I wouldn't say, without looking at the records, what was the last date on which the Bond and Mortgage Corporation sold any of the unissued stock of the Stores Company. I am sure they were not selling any of the unissued stock of the Stores Company after September 1930. I wouldn't have any way of correctly answering the question as to whether, in addition to the trans- [302] fers of stock which they had previously purchased and which stood in their name, that some of the transfers in Exhibit 107 represented sales of stock to customers long prior to the date shown in the ledger. I could not say when the sale of all of the stock took place without checking the records.

Under the contract between the Bond and Mortgage Corporation and the Stores Company the Bond and Mortgage Corporation purchased the stock from the Stores Company. They actually paid for the stock and delivered the money after they had been paid by their customers, although I do not have any independent recollection of that.

TOM H. BRANDT,

recalled as a witness on behalf of the Government, testified:

Referring to Government's Exhibit 107 for identification, the entries on the first page were made

(Testimony of Tom H. Brandt.)

by E. B. Horne, before my connection with the company, but those on the second and third pages were made by me. I have audited the figures on the first page and checked them with the records and other books of the company and they are correct. Mr. Horne was Secretary-Treasurer of the company at that time. The figures that were made by me or under my direction, which I have testified to, show the transactions which they purport to represent.

Thereupon the Government offered and there was received in evidence Government's Exhibit 107, which abstracted to the issue is as follows:

Account of Greenbaum Brothers, 700 Security Building, Phoenix, Arizona, in capital stock ledger, showing various certificates of common stock cancelled and re-issued, between May 24, 1929, and November 18, 1929. The last item in this account, however, is dated June 30, 1930, whereby 200 shares were transferred to Bond and Mortgage Corporation, balancing [303] out the account; also showing stock issued to them out of A. E. Sanders' 151,000 shares.

Notation: May 2, 1929—Cert. 272 for 3,850 shares were issued to the Greenbaum Brothers from A. E. Sanders' stock.

December 12, 1929—Cert. 963 for 5,000 shares, and Cert. 962 for 500 shares, were issued

(Testimony of Tom H. Brandt.)

to the Greenbaum Brothers from A. E. Sanders' stock.

December 12, 1929—Cert. 965 for 2105 shares was issued to the Greenbaum Brothers from A. E. Sanders' stock.

June 30, 1930—JV-251—200 shares transferred to Bond and Mortgage Corporation, balancing out the account.

The Greenbaum defendants duly objected to the introduction in evidence of Government's Exhibit 107 upon the ground and for the reason that it was incompetent, irrelevant and immaterial, and did not tend to prove any offense charged in the indictment, and that the proper foundation had not been laid for its introduction, and it was hearsay as to the defendants and not binding upon them, but the Court overruled said objection, to which ruling the Greenbaum defendants then and there duly excepted.

The witness resumed: Exhibit 107 is the individual stock ledger sheet of Greenbaum Brothers. They started to cancel out on their certificates on May 24, 1929. That account represents the day the certificates were cancelled, the number of particular certificates cancelled, the number of shares cancelled, the certificate number issued, and the number of shares issued, and the balance of the shares as a result of the issuance to Greenbaum Brothers, less cancellations. The figures on the other exhibit,

(Testimony of Tom H. Brandt.)

which represents the Bond and Mortgage Corporation account, represent exactly the same thing. When the Greenbaum Brothers started to do business as the Bond and Mortgage Corporation the balance of the stock [304] was carried forward in the Bond and Mortgage Corporation account, balancing out the Greenbaum Brothers account.

When these certificates were transferred to the transferees named in these letters of instructions an entry was then made on the ledger sheet of the particular transferee, in this same book, that is, individual sheets were opened up as certificates were issued. This capital stock ledger (Government's Exhibit 92 for identification) represents the outstanding shares held by any individual, whether it was transferred or otherwise. The ledger reflects that these shares transferred from Greenbaum Brothers or the Bond and Mortgage Corporation were transfers of stock originally transferred to Greenbaum Brothers or the Bond and Mortgage Corporation by Mr. A. E. Sanders out of his personal stock.

CROSS EXAMINATION.

When I say that those were transfers out of the personal stock of A. E. Sanders I refer to the block of 151,000 shares issued to him pursuant to the permit of the Corporation Commission. I recall an instance where A. E. Sanders caused to be issued to himself a block of 34,500 or 35,000 shares

(Testimony of Tom H. Brandt.)

of stock separate and aside from this 151,000 share block. That 34,500 or 35,000 block of stock was issued in error and was cancelled out and Mr. Sanders no longer had the certificate for it or the shares. The Greenbaums received no part, and sold no part, of that particular certificate for 34,500 or 35,000 shares. I know this of my own knowledge.

At this juncture counsel for the Greenbaums announced that as Mr. Brandt has been called and recalled back and forth, and if cross examination is resumed they would like to reserve further cross examination, to which suggestion the [305] Court said, "Yes, if you don't repeat."

The witness resumed: During all of the time I was in charge of the books of the Company I truly and accurately kept the accounts. The accounts were not in balance when I went with the company, but I caused them to be kept in balance until my tenure as comptroller expired. I recall that \$5,000.00 of the store money was checked out and a check made out in duplicate, the original check being made payable to the Phoenix Packing Company, and the duplicate, with voucher attached, showing United Clarence Saunders Stores with the explanation, on the duplicate, that it was advanced for the Kansas unit. That was a three-way deal; the advance was to the Phoenix Packing Company—they got the cash; the charge was against the

(Testimony of Tom H. Brandt.)

Kansas unit, with a reimbursement later from the Kansas unit. I did not as a matter of fact personally get the cash. This \$5,000.00 was all checked out of the Stores account at one time in one check, around the 26th or 27th of June, 1930. It was checked out on a check signed by me, and I think that check bore a dual signature. It was drawn on the First National Bank of Arizona. I did not draw \$2,000.00 in one check and \$500.00 in another check out of the \$5,000.00. I drew that money out of the Phoenix Packing Company account that had nothing to do with the Clarence Saunders Stores. This money which I withdrew came from the Sanders Stores. I didn't cause that withdrawal to be made from the Saunders Stores and the Packing Company account for a personal purpose of my own. \$4,400.00 of that money was impounded at the Citizens State Bank under an order of the State Corporation Commission. I didn't deposit \$2,000.00 of those funds in the Commercial National Bank in Phoenix. I stated \$4,400.00 out of the \$5,000.00 went down to the Citizens State Bank. There was only one check drawn against the \$4,400.00 [306] and that was under the Corporation Commission's order. The \$5,000.00 check drawn out of the First National Bank was deposited in the Valley Bank to the credit of the Phoenix Packing Company. The purpose of that withdrawal and its transfer to the Phoenix Packing Company was to impound the funds in the Citizens State Bank

(Testimony of Tom H. Brandt.)

under order of the Corporation Commission in the amount of \$4,400.00. There was only one person authorized to check on that account. I did not check on the Commercial National Bank, as I had no Phoenix Packing Company account in that bank. I didn't say that I had taken some of the Phoenix Packing Company money which I got from Sanders Stores and put it to my own account, and I didn't do that.

Thereupon a document was marked Defendants' Exhibit "E" for identification.

The witness resumed: Looking at defendants' Exhibit "E" for identification, according to that I knew of a shortage of accounts at the Sanders Stores while I was comptroller. That is my signature appearing on the middle of Page 11 of that exhibit, and it was signed by me on or about the 11th day of August, 1930. I won't testify there was a shortage in the United Clarence Saunders Store account while I was its comptroller. I will testify to the statement a while ago that there was a three cornered deal to be repaid by the Kansas unit. In that I called it a shortage. It was not subsequently made good by the Kansas unit. It is not a fact that the shortage was my own personal shortage. I kept my own personal accounts at two banks, the Valley Bank and the Commercial Bank. None of these funds out of which I say the shortage arose found their way into my private

(Testimony of Tom H. Brandt.)

accounts. The Packing Company account was never straightened out. On this particular [307] \$5,000.00 there is a contention there. I stated \$4,400.00 of it was ordered escrowed by the Corporation Commission in the sale of the Phoenix Packing Company stock. We were required to retain twenty percent of that until the stock was issued. Under their orders we placed it in the Citizens State Bank. Under the promise of A. E. Sanders in Kansas to get funds here I made a fictitious entry and I showed it as a check to the Phoenix Packing Company for \$5,000.00, and on the duplicate voucher I showed a charge against the Kansas unit, and put \$4,400.00 in the Citizens State Bank at Five Points, because on June 30th we had to make a return to the Corporation Commission on the sale of stock and it required that that money be put up there. That had nothing to do with the stores company except that the Greenbaums owned the Packers Securities Company and they were selling that issue of stock. That had nothing to do with it except that Sanders was President of the packing company. They were two entirely different corporations.

Thereupon Defendants' Exhibit "E" for identification was offered in evidence, and which abstracted to the issue is as follows:

STATEMENT OF TOM H. BRANDT—
MADE ON AUGUST 11, 1930, COMMENCING AT 1:55 P. M. IN THE PRESENCE

(Testimony of Tom H. Brandt.)

OF A. E. SANDERS, GUS B. GREENBAUM, ALEXANDER B. BAKER, and EDWARD LAZAR, OF THE LAZAR SECRET SERVICE. STATEMENT TAKEN AND TRANSCRIBED BY CLAIRE GAGE.

This statement consists of eleven typewritten pages of legal cap, being questions and answers with reference to a shortage, and stating in effect that around the 1st of July, 1930, Brandt drew a \$2,000.00 check on the Phoenix Packing Company, payable to himself, and another check of \$500.00 payable to himself, and deposited the \$2,000.00 check to his personal account in the Commercial National Bank of Phoenix, and the \$500.00 check to his personal account in the Valley Bank at Phoenix. The statement contains, among others, the following questions and answers: [308]

“Q. What is the extent of that shortage?

A. May I answer you in a different way? The extent of the shortage was \$5,000.00 taken from the United Clarence Saunders Stores and deposited to the account of the Phoenix Packing Company and from which I have checked out \$2,500.00.

Q. To yourself?

A. Yes sir.

Q. How did you get that \$5,000.00 out of the United Clarence Saunders Stores into the Phoenix Packing Company, by what means?

(Testimony of Tom H. Brandt.)

A. We make our checks up in duplicate, and the original check showed payable to the Phoenix Packing Company \$5,000.00. The duplicate showed United Clarence Saunders Stores, and the explanation was 'advanced to the Kansas unit'. That was charged into the United Clarence Saunders Stores account as organization and development expenses.

Q. In how many transactions or checks did you take this \$5,000.00.

A. One.

* * * * *

Q. Then another check for traveling expenses appears on the 24th of July for \$100.00?

A. No.

Q. You took that upon yourself?

A. Yes.

* * * * *

Q. Can you make this money good, Tom?

A. I think so, I couldn't possibly do it all at one time." [309]

The Government objected to the introduction of the Defendants' Exhibit "E" for identification on the ground that it was improper cross examination, and immaterial, and did not tend to prove any defense, and that it was a collateral matter brought out on cross examination, and was not proper for testing the credibility of the witness, or for the purpose of impeaching him.

Thereupon the Court recessed the jury, and after

(Testimony of Tom H. Brandt.)

considerable argument in which counsel for the Greenbaum defendants insisted that the disputed exhibit for identification was admissable for the purpose of showing the incorrectness of the entries in the books (Government's Exhibits 34 to 39 for identification) and for the purpose of testing the credibility of the witness. Whereupon the Court further stood at recess until 2:00 o'clock of the same day.

Whereupon the following proceedings were had:

CROSS EXAMINATION, CONTINUED.

Whereupon four checks were marked Defendants' Exhibit "F" for identification.

I subsequently withdrew part of the \$4,400.00 in the Citizens State Bank to the account of the Phoenix Packing Company for the purpose of paying Mr. Whitney \$1,750.00 for professional services, paid under the order of the Corporation Commission. I withdrew no further part of that money. Looking at Defendants' Exhibit "F" for identification, consisting of four checks, I will say after examining them that they each bear my signature on their face and that they were drawn by me on or about the dates each of them bear, and they each bear my endorsement on the reverse side.

Thereupon the defendants offered in evidence [310] Defendants' Exhibit "F" marked for identification, of which the following is a photostatic copy: [311]

PHOENIX PACKING COMPANY
Luhre Tower

No. 41

PHOENIX, ARIZONA

PAY TO THE
ORDER OF

Five Hundred & no/100

\$ 500.00

TO THE VALLEY BANK,

PHOENIX, ARIZONA.

PHOENIX PACKING COMPANY

DOLLARS

Pres. Sec'y Treas.

91-2
IT 107A

THE COMMERCIAL
NATIONAL BANK

JUL 25 1930

PAY TO THE ORDER OF

PHOENIX PACKING COMPANY
Luhre Tower

No. 16

PHOENIX, ARIZONA

1030

PAY TO THE
ORDER OF

Five hundred & no/100

\$ 500.00

TO THE VALLEY BANK,

PHOENIX, ARIZONA.

PHOENIX PACKING COMPANY

Pres. Sec'y Treas.

91-2
IT 107A

500.00

EXHIBIT NO. *11*

Marked for
Identification only

NOV 20 1934

First Bank & Trust
Dallas, Texas

FOR THE OFFICE OF ARIZONA
UNITED STATES DISTRICT COURT

Phoenicia

Case No. *2-4178-Phy*

M. D. vs. Lenora M.

PHOENIX PACKING COMPANY
Lubbock Tower

PAY TO THE
ORDER OF

Edmund K. ...

TO THE VALLEY BANK,
PHOENIX, ARIZONA.

91-2
HLOTA

PHOENIX-PACKING COMPANY

DOLLARS

Pres. Sec'y Treas.

9130
of 9130
W 9130

Edmund K. ...

PHOENIX PACKING COMPANY
Lubbock Tower

PAY TO THE
ORDER OF

Two Thousand ...

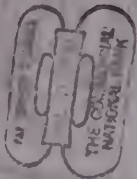
TO THE VALLEY BANK,
PHOENIX, ARIZONA.

91-2
HLOTA

PHOENIX-PACKING COMPANY

DOLLARS

Pres. Sec'y Treas.



Edmund K. ...

9130
of 9130

No.

7-2 1030

PHOENIX, ARIZONA

10000

No.

7-2 1030

PHOENIX, ARIZONA

20000

Pres. Sec'y Treas.

(Testimony of Tom H. Brandt.)

The Government objected to the introduction of this exhibit on the grounds that it was immaterial and was not proper cross examination, and had nothing whatever to do with the issues involved in the case. Whereupon, after considerable colloquy between the Court and counsel, further examination of the witness was had.

The witness resumed: I recall a meeting in Phoenix, Arizona, on or about August 11, 1930, shortly after the noon hour, at which A. E. Sanders, Gus B. Greenbaum, Alexander B. Baker and Edward LaZar were present—I was also present at that meeting.

Thereupon the Jury retired from the Court Room and the following proceedings were had:

“The COURT: * * * This witness has testified that one of the entries in that book is fictitious. It strikes me that this satisfies your inquiry. Make your avowal.

Mr. HOWE: At this time the defendants Greenbaum, and each of them, avow that if permitted to do so by the Court, they would ask the witness Brandt the question heretofore objected to, which objection was sustained, and that in response to such question the witness Brandt would testify that at such conference and in the presence of the persons named, he did [315] state to them that there was a shortage of \$5,000.00 in the account of the United Clarence Saunders Stores, and that he was responsible for the shortage, and that out of

(Testimony of Tom H. Brandt.)

the \$5,000.00 by him taken from the United Clarence Saunders Stores, he had checked out the sum of \$2,500.00 for his own personal use, in separate checks, and if asked how this shortage of funds from the Stores Corporation was effectuated or consummated, would testify in response thereto that checks of the Stores Company were made up in duplicate, and that the original check figuring in this transaction, that is, the check of \$5,000.00 in its original form showed payable to the Phoenix Packing Company, but that the duplicate check showed United Clarence Saunders Stores, and that the explanation on the duplicate check was that the sum of \$5,000.00 had been advanced to the Kansas unit, and that accordingly the books of account of the Sanders Stores here showed an entry or a charge of \$5,000.00 as organization and development expense, when in truth and in fact such entry was false and was but a device to cover up the speculation or embezzlement of the witness Brandt. We avow that if permitted to ask the witness Brandt as to the time in which he took \$5,000.00 of the Stores Company's money for his own personal use, he would state it was taken around about the 26th or 27th of June, 1930, in the form of check on the Saunders Stores, signed by himself, drawn upon the First National Bank of Phoenix, and that the withdrawal was charged against the Kansas unit to organization and development expenses. We will avow if permitted to ask the witness Brandt what

(Testimony of Tom H. Brandt.)

disposition was made by him of the money withdrawn from the Saunders Stores he would testify that he deposited \$2,000.00 of that embezzled sum in the Commercial National Bank at Phoenix, and that he afterwards withdrew from the Commercial Bank from [316] time to time the sum in question, and that he subsequently deposited \$1,000.00 of the funds so taken from the Stores Company to his personal account in the First National Bank, and that the money so taken by him through the scheme was used for his own personal use, and that it was covered up by a fictitious entry in the books of the company, and we avow further that it can be developed through this witness that many of the books and records of the company were kept by him at his own home, and not at the company office, for the purpose of concealing these transactions, which books and records are not now present in court.

Mr. FLYNN: We interpose an objection, your Honor, and object to the introduction of this evidence on cross examination in accordance with the avowal on the ground it is immaterial, not proper cross examination, that it involves collateral matters either not brought out at all on direct examination, or cross examination, or brought out on cross examination.

The COURT: I think the matter of keeping the books would be proper cross examination, Mr. Flynn.

(Testimony of Tom H. Brandt.)

Mr. FLYNN: I don't apprehend that we have to separate counsel's avowal?

The COURT: No, that is true.

Mr. FLYNN: We are objecting to the entire avowal.

The COURT: There is probably something in the avowal which is pertinent. I think there are other matters that are not. This is a case in which the Court feels it should be satisfied on the introduction of this testimony, and I will take a recess until I make a ruling on it. I may be a little confused because this witness has been called and recalled on many occasions, and counsel announced they [317] would reserve their cross examination at different times, and I am at sea as to what part of his testimony on cross examination was reserved. I will recess for a few minutes."

The jury was returned into Court, all jurors being present.

"The COURT: The objection to the avowal is sustained.

Mr. HOWE: Please note our exception.

The COURT: The reporter will note the exception. Proceed."

The witness resumed: The transaction with reference to the \$5,000.00 item about which I have been interrogated was not the sole reason for my discharge, it was one of them.

(Testimony of Tom H. Brandt.)

At this juncture counsel for the Greenbaum defendants announced that it reserved the right to cross examine the witness if he is recalled. It was granted.

L. D. NULL,

recalled as a witness for re-cross examination, testified:

I stated the other day that there were only a few missing items or missing accounts in the books of the Clarence Saunders stores when they came to me for examination. I said Mr. Walter A. Wood is a partner of mine.

Thereupon Defendants' Exhibit "G" was marked for identification.

I have seen the original of the copy you show me, being an application for auditor's fees and Order to Show Cause. That was prepared and signed by my partner Mr. Wood.

Thereupon the Greenbaum defendants offered in evidence Defendants' Exhibit "G" for identification, which abstracted to the issue is as follows:

[318]

Application for Auditor's Fees, and for Order to Show Cause, in No. 34107, entitled "C. W. Messick, Plaintiff, vs. United Clarence Saunders Stores, Inc., a corporation, et al, Defendants", pending in the Superior Court of Maricopa County, Arizona.

(Testimony of L. D. Null.)

Application signed by Walter A. Wood, which states in effect:

“That a large part of the books and records of said defendants were so incomplete that your Auditor was required, in order to reach a satisfactory and accurate conclusion, to rebuild many of the voluminous transactions carried by said defendants from extraneous material, which your auditor was obligated in many instances to discover; that in order to find and procure the extraneous material, to investigate, analyze and build up the same into the form as the same is contained in your auditor’s report, your auditor was obliged to employ expert accountants and assistants, together with stenographers, to assist your auditor in obtaining, checking and verifying the figures and data contained in your auditor’s report
* * * ”

The application further states that the following named persons worked for a number of days, as set forth opposite their respective names:

Walter A. Wood	183½ days
L. D. Null	173 days
Earl Canning	60½ days
E. C. Bradford	159 days
J. B. Ray	52 days

Prays for an allowance of \$11,220.00, plus expenses incurred in the sum of \$2,464.12. [319]

(Testimony of L. D. Null.)

The Government duly objected to the admission of said exhibit on the ground that it was immaterial and on the further ground that it was prepared and signed by someone who was not a witness in the case and that no opportunity was afforded the Government to cross examine him about the contents of it, and upon the further ground that it was not proper cross examination, and the court sustained said objection, to which ruling the Greenbaum defendants then and there duly excepted.

The witness resumed: After looking at this report by my partner Mr. Wood I will say there were a few missing matters of no great importance. It is not true that a large part of the books and records of the Stores were so incomplete that the auditors were required, in order to reach a satisfactory and accurate conclusion, to rebuild any voluminous transactions carried on by the corporation.

ROY N. DAVIDSON,

called as a witness on behalf of the Government,
testified: [320]

I am Acting Collector of Internal Revenue for the District of Arizona, and have in my charge the records of the office of the Internal Revenue Department for that District. I have with me part of those records in regard to the income tax return of the Arizona Clarence Saunders Stores, or United

(Testimony of Roy N. Davidson.)

Sanders Stores, Inc., These records cover the years 1929 and '30.

“Mr. FLYNN: Will you produce them, please?”

A. I will have to respectfully decline, Judge.

The COURT: You decline?

A. Here is my authority, your Honor (handing instructions to the Court)

The witness resumed: You ask me how I got that rule—I got it in the Sullivan case.

The COURT: These regulations don't seem to make any distinction. Of course, by the consent of the defendant in the case, I suppose they might be introduced. * * *

The COURT: You seem to be pretty well fortified with authority, Mr. Davidson, to support your position. (Addressing Mr. Flynn) Did I understand you to say they were introduced as evidence in the Sullivan case?

Mr. FLYNN: There were witnesses in the Sullivan case whose incomes were involved, not the defendants, but other witnesses and other corporations, where the taxpayer took the stand and waived his privilege, and the Judge presiding in those cases permitted the introduction of the returns.”

The witness resumed: In our office the only records we have are merely a card record of the filing. We do not have the returns, they are in Washing-

(Testimony of Roy N. Davidson.)

ton. All returns of that class are sent to and kept in Washington. We have merely [321] a record of filing, by years, of corporations, showing their net income which we transcribe from the return. That record is kept in our office as long as the corporation is in existence.

Thereupon the Court stated that he was inclined to believe under the circumstances that with the consent of the president of the corporation that these cards could be admitted, but that the consent should be obtained before Mr. Davidson should be required to disclose any facts as to the records of his office.

The witness resumed: I have the records for 1929 of the Arizona Clarence Saunders Stores, and of 1930 for the United Sanders Stores, Inc.

Thereupon the witness was withdrawn from the witness stand.

A. E. SANDERS,

recalled as a witness on behalf of the Government, testified:

I was President of the Arizona Clarence Saunders Stores and its successors in name up until October 1930. I held after that, the office of General Manager of the company. Mr. H. D. Sanders became President on October 15, 1930. I was President all during the year 1929, and was connected with the

(Testimony of A. E. Sanders.)

company as General Manager after October 15, 1930. I don't know whether I was named as a Director or not.

“Mr. FLYNN: Have you any objection, or will you consent to the official of the Internal Revenue Office Collector of Internal Revenue for the State and District of Arizona, to testify in regard to the income tax return of the Arizona Clarence Saunders Stores, or its successors in name and interest for the years 1929 and 1930? [322]

Mr. WHITNEY: We object to that on the ground that Mr. Sanders is not now President of the company, no showing that he has any authority to grant that permission, and the fact that he was President in 1929 and part of 1930 would not give him the right now to waive on behalf of that corporation, or to waive any objection the corporation may have to the examining of those corporation records. That is the first objection. The second objection is that whatever those cards are, they are not binding on the defendants, and there has been no proof that this corporation has been actually dissolved. The fact of the matter is that it hasn't been dissolved.

The COURT: Where is it now, in the receivership?

Mr. WHITNEY: That is not a dissolution

(Testimony of A. E. Sanders.)

of a corporation. Your Honor has a couple in here that are very alive.

The COURT: I asked you if it is not in receivership.

Mr. WHITNEY: It is in receivership, yes, but that doesn't give him the authority as an officer of the corporation in 1929 to waive their right now to look at a tax return prior to that any more than it would give me the right if I was attorney for your Honor in 1929, and not attorney for you now, to step up and disclose confidential relations between us.

The COURT: The question is if he had any objection. This is personal.

Mr. REIN: Mr. Whitney's objection is that it don't make any difference whether he has or not.

The COURT: He may answer the question.

A. I haven't any objection. [323]

The COURT: That leaves us in another embarrassing position.

Mr. FLYNN: I think we are willing to concede that the consent of Mr. Sanders, not being President when the corporation went into the hands of the receiver, that we are in no better position than we were before, but we don't concede that the testimony of Mr. Davidson is not admissible at this time. I think it is admissible by reason of the fact that the corporation is in the hands of a receiver and that there is

(Testimony of A. E. Sanders.)

no one who has the authority to waive that for the reason it doesn't involve any going concern or any individual, the reason for the rule not being in existence, the rule should not apply.

The COURT: Well, I think that is probably true. You may enter an order, Mr. Clerk, a minute entry, that the Court directs Mr. Davidson, the Internal Revenue Collector of this District, to disclose the record. Take the Stand."

ROY M. DAVIDSON

resumed the witness stand:

"The COURT: The purpose of your offer is to show what?

Mr. FLYNN: All I have asked the witness now is to produce the records. I was going to have the witness either introduce them in the record or testify to them in order to avoid putting these Government records into evidence, to have him read the records into the evidence, * * * the Government is very anxious to investigate this question to satisfy ourselves and the Court that there is no error committed. We don't want to commit error in this case, and it might be advisable if it meets the Court's approval to recess until [324] morning, and we will either rest then or proceed with this testimony which will only take about five minutes.

The COURT: Very well. Bear in mind the

(Testimony of Roy M. Davidson.)

admonition, gentlemen. Recess until tomorrow morning at ten o'clock."

Whereupon,

ROY M. DAVIDSON,

on Wednesday, November 21st, 1934, at 10:00 o'clock A. M. resumed the witness stand for further direct examination, and testified:

I now have authority of the Department to testify in regard to the records as shown by my records of the United Sanders Stores, and the Arizona Clarence Saunders Stores. I received this telegram in reply to one that was sent to the Commissioner of Internal Revenue.

Thereupon the telegram was offered and received in evidence as Government's Exhibit 108, which abstracted to the issue is as follows:

Postal telegram, dated November 21, 1934, from Washington, D. C., authorizing Acting Collector of Internal Revenue at Phoenix, Arizona to testify in this case with reference to income tax return of States Company for the years 1929 and 1930. Signed "Hilvering Commr."

The Greenbaum defendants duly objected to the admission of said telegram in evidence upon the grounds that the proper foundation had not been laid for its introduction, and that it had not been

(Testimony of Roy M. Davidson.)

properly identified, and that the disclosing of the returns was in violation of Section 3167 of the Revised *States* of the United States, and that there was no showing that Helvering is the Commissioner of Internal Revenue, and if he is, there is no showing that he sent the telegram. But, the Court overruled said objections, to which ruling the defendants Greenbaum then and there duly excepted. [325]

The witness resumed: This instrument is one of the permanent records, kept in the regular order of business in my office and is a record showing the action in connection with the return of the Arizona Clarence Saunders Stores, Inc., for the income tax year 1929.

Thereupon the instrument was offered in evidence by the Government, and upon permission first had and obtained defendants examined the witness on voir dire.

VOIR DIRE EXAMINATION

Referring to this proffered exhibit I did not make the entries thereon, and do not know of my own knowledge whether or not those entries are correct.

“The COURT: Can you tell who made them?

A. By their handwriting.

Mr. WHITNEY: Where is the original from which this data was taken?

A. I presume it is in Washington, D. C.

(Testimony of Roy M. Davidson.)

Q. That is available on proper subpoena?

A. I don't know.

Mr. WHITNEY: We object to the introduction of this.

The COURT: Who made those entries?

A. One was made by Mr. Cornish. He is dead.

Mr. WHITNEY: Were those entries made under your direct supervision?

A. I have entire charge of the office and see that these things are done.

Q. You don't know anything about the entries yourself?

A. No, just that they are made and by whom they are made.

Mr. WHITNEY: We object to the introduction of this exhibit—you don't know whether they are true or correct or not, do you? [326]

A. I couldn't swear to it.

Q. Nor whether they were correctly copied from the original tax return?

A. I don't know.

Mr. WHITNEY: We object to this document, first on the ground that it is not the best evidence, second, upon the grounds that it is hearsay, third, upon the grounds that this document is not signed by anyone and has a notation on it that shows that the document itself is not complete; on the ground that there

(Testimony of Roy M. Davidson.)

is no foundation showing that this document in any way binds the defendants Greenbaum. It is certainly not the best evidence. Your Honor didn't try these income tax cases, but I recollect during the trial of those cases they had to bring in photostatic, certified, authenticated copies of the returns from Washington, D. C. into this Court Room.

Mr. FLYNN: That was for the purpose of showing the details of the return, your Honor.

Mr. WHITNEY: We object further on the ground there is no opportunity afforded the defendants to cross examine the person who made those entries, no opportunity to cross examine the person who made the original return, if the return was here.

The COURT: There is no doubt but what the return itself would be the best evidence.

Mr. FLYNN: Of what the return contained as to the details, but under the rule of evidence any Government document, the only identification necessary is that it is a Government document, as far as foundation is necessary. There is also a presumption that all Government [327] documents are correctly kept and that they truly represent the records that they purport to represent.

The COURT: I believe that is the rule as to public records."

(Testimony of Roy M. Davidson.)

The witness resumed: They never kept the original income tax returns of corporations in the office here. "They kept the individual tax returns and do now keep the fall individual returns here."

Whereupon the document was again offered in evidence, and the same objection was made, and the additional proceedings were had:

"Mr. WHITNEY: Further, there is no showing who signed that return and if permitted I would like to ask Mr. Davidson if he knows who signed that return.

A. You mean the Income Tax return?

Q. The original return.

A. No, I don't know who signed it.

Mr. WHITNEY: We object to it on the grounds previously assigned and on the further ground that it is incompetent, irrelevant and immaterial."

Thereupon the Government again offered and there was received in evidence the document referred to which was marked Government's Exhibit 109, of which the following is a photostatic copy: [328]

INCOME TAX

CORPORATIONS

My Gargan Saunders & Co
(Name and Address)

(Name of President)

(Name of Treasurer)

(Kind of business)

(Remarks)

(Date of Organization)
1925-12-8

(State in which organized)

	1926	1927	1928	1929	1930
Extensions granted to:					
Return filed					
Filed (month-year)				<i>3/27/29</i>	
Filed (page-line)				<i>85-2-17</i>	
Capital Stock					
Indebtedness					
Gross Income					
Net Income					
Income Tax 15 1/4 per cent					
Penalty 5 per cent					
Penalty 25 per cent					
Penalty 50 per cent					
Total tax					

125,588.00
60,150.27
153
United States
St. Louis, Mo

TREASURY DEPARTMENT, U. S. INTERNAL REVENUE.—Form 649.—Revised Sept., 1925

UNRECORDED RETURN CASE 3-442

	1931	1932	1933	1934	1935
Extensions granted to					
Return filed					
Filed (month-year)					
Filed (page-line)					
Capital Stock					
Indebtedness					
Gross Income					
Net Income					
Income Tax 15 1/4 per cent					
Penalty 5 per cent					
Penalty 25 per cent					
Penalty 50 per cent					
Total tax					

Sent - Exhibit No. 101
ADMITTED AND FILED
NOV 21 1934

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
BY *George A. H. H. H. H.*
Deputy Clerk

Case No. *C. 4879-Oh*
U.S. vs. Saunders et al

3-442

(Testimony of Roy M. Davidson.)

The Greenbaum defendants duly objected to the admitting of Government's Exhibit 109 in evidence upon the following grounds: First, that it is not the best evidence; second, that it is hearsay as to the Greenbaum defendants; third, that the document is not signed by anyone, and that it shows on its face that it is not complete; fourth, that there was no foundation laid for the introduction of the document; fifth, that there was no opportunity afforded the defendants to examine the person who made those entries, or to cross examine the person who made the original income tax return; sixth, that there is no showing that this kind of a document was required to be kept by Statute; seventh, that there is no showing as to who signed the original income tax return; eighth, that the document is incompetent, irrelevant and immaterial; ninth, that the proper procedure would be to bring photo-static, certified and authenticated copies of the original returns from Washington, D. C. into this Court Room, but the Court overruled said objections, to which ruling the Greenbaum defendants then and there duly excepted.

The witness resumed: This card that you now show me is kept as one of the permanent records of the Internal Revenue office in Phoenix, Arizona, in the regular course of business. It is a record made under my direction by someone employed in the Internal Revenue Department.

(Testimony of Roy M. Davidson.)

Thereupon the card was offered in evidence and upon permission being first had and obtained the witness was examined on his voir dire.

VOIR DIRE EXAMINATION

Referring to this last proffered exhibit of the Government, I didn't make the entries on there, and I didn't [331] personally know anything about the truth and correctness of those entries. I personally saw the original return from which this data was made up for that particular year. (1930) I can't testify now whether those figures are true and correct. I don't know who signed the original income tax return. I don't know whether it was signed by John Smith, or by whom. I don't even know of my own knowledge whether it was signed by an officer of the corporation. I know something about the correctness of some of the cards because I make them up myself, but I don't know anything about this one.

“The COURT: Those are official records of your department?”

A. They are.

Q. You are required to keep a record of those?”

A. We are.

Mr. WHITNEY: One more question, where is the original Income Tax Return from which this data was gotten?”

A. I presume it is in the files in Washington.

(Testimony of Roy M. Davidson.)

Q. It is available upon proper application?

A. I presume so.

Q. You haven't it here in Phoenix?

A. No, we haven't it here."

Thereupon the Government offered and there was received in evidence the card referred to, marked Government's Exhibit 110, of which the following is a photostatic copy: [332]

(Testimony of Roy M. Davidson.)

The Greenbaum defendants duly objected to the introduction of Government's Exhibit 110 on the following grounds: First, that it was incompetent, irrelevant and immaterial; second, that it is not the best evidence because the original income tax return is available upon proper application; third, for the grounds that it is hearsay; fourth, upon the grounds that it is not signed by anyone; fifth, that it is not binding upon the Greenbaums because no proper foundation has been laid for it, and it has not been properly identified; sixth, the original papers from which this data was taken has not been properly identified, but the Court overruled said objections, to which ruling the said Greenbaum defendants then and there duly excepted.

(Both exhibits 109 and 110 were read to the Jury by the witness).

Thereupon the Greenbaum defendants duly moved to strike each of Government's Exhibits 109 and 110 from the files on the grounds previously assigned in the objections, and particularly upon the grounds that said exhibits were not the best evidence, were hearsay, and that no proper foundation had been laid for their introduction, but the

(Testimony of Roy M. Davidson.)

Court denied said motion, to which ruling the Greenbaum defendants then and there duly excepted.

CROSS EXAMINATION

The original income tax return for the year 1930 was filed in the year 1931. The Stores Company started filing returns in 1928. I have some recollection as to the returns filed by the United Sanders Stores for one year, but cannot remember the exact entries. I do not know how much the taxpayer attempted to take off their accounts receivable that were [335] uncollectible. I do not know what inventory losses were taken. I couldn't say whether taxpayers in filing their income tax returns attempted to get the income at the lowest possible point to get the least possible tax. I don't remember the return, and don't know how much depreciation was charged off. I don't remember what the obsolescence was. I just remember that one of the returns was filed.

“The COURT: What else do you remember?”

A. The reason I remember the return was because the man who was making the audit of the return for the year 1930 called my attention to the losses.

Mr. REIN: But the foundation of that loss you know nothing about?

A. No sir.”

THEREUPON the Plaintiff, United States of America rested.

Whereupon the defendants made a separate motion to strike each of the Government's Exhibits, objection to the admission of which had theretofore been made by the defendants, but the court separately denied such motions, to which rulings of the court the defendants, by their counsel, then and there duly excepted.

Whereupon, defendants moved the court, at the close of the plaintiff's case, to direct a verdict for the defendants, finding them not guilty, (on the identical grounds hereinafter stated in the motion of the defendants for a directed verdict made at the close of all the evidence) which motion was denied by the court, to which ruling the defendants, by their counsel, then and there duly excepted.

Thereupon, the defendants rested.

Thereupon, both sides rested. [336]

(The foregoing was all the evidence introduced on the trial of this cause.)

Whereupon, defendants moved the court, at the close of all the evidence, to direct a verdict for the defendants, finding them not guilty, upon the following grounds:

1. The evidence is insufficient upon which to base a verdict of guilty.

2. The evidence demonstrates the defendants and each of them are not guilty.

3. The evidence of the Government affirmatively shows that a reasonable doubt as to the guilt of said defendants, and each of them, exists.

4. The Government has wholly failed to connect the said defendants, or any of them, with participation in parts or portions of the alleged scheme to defraud, which are material to the charge.

5. The indictment pleads that the defendants did devise and that they intended to devise one scheme and artifice to defraud, which scheme consists of a number of component parts, the material parts of said alleged scheme, not having been proved by any competent evidence against said defendants, or any of them.

6. The indictment pleads that as a further and material part of the said scheme and artifice the defendants A. E. Sanders and his associates organized under the laws of Arizona, the Piggly-Wiggly Holding Corporation, the name of which was changed to U-Save Holding Corporation, which was thereafter engaged in business in Los Angeles, California. The evidence fails to disclose any connection whatsoever between the said defendants, or any of them, with said allegation in said indictment. [337]

7. The evidence of the Government introduced

in support of the indictment discloses that the defendants, A. E. Sanders and his associates did organize said holding corporation, did make certain representations with respect thereto and did use the United States Mails in furtherance of said representations, whereas said evidence wholly fails to connect Gus B. Greenbaum, Charles Greenbaum or William Greenbaum, or any of them with said corporation, or with said representations or with said use of the mails.

8. The indictment pleads as a further and material part of said alleged scheme and artifice that said U-Save Holding Corporation should and did acquire the majority of common capital stock of the United Sanders Stores, Inc., (the successor in name to said Clarence Saunders Stores, Inc.), and that said U-Save Holding Corporation took charge of the assets of the United Sanders Stores, Inc., and removed merchandise valued at more than \$100,000.00 from the warehouses of said latter corporation at Phoenix, Tucson and Nogales, Arizona, and shipped said merchandise to Los Angeles, California, without rendering just and proper compensation therefor. The evidence introduced by the Government wholly fails to connect the said defendants, or any of them, with said parts or portions of said alleged scheme or device, and said evidence affirmatively discloses that said defendants were in no manner

connected with said parts or portions of said alleged scheme or device; that the evidence further discloses that there were more than one scheme, each participated in by different defendants, or parties, independent of each other.

9. The evidence introduced by the Government in attempted support of the allegations of the indictment constitute a material variance from the indictment. [338]

10. The evidence introduced by the Government wholly fails to connect said defendants, or any of them, with the organization or incorporation of said Clarence Saunders Stores, Inc., alleged as a part of said scheme and artifice, and wholly fails to connect said defendants, or any of them, with the changes in the name of said corporation, alleged as a part of said scheme and artifice.

11. The evidence introduced by the Government wholly fails to connect the said defendants, or any of them, with the alleged transfer by the defendant A. E. Sanders, to said corporation, of a certain franchise agreement between the said Sanders and a corporation known as Clarence Saunders Corporation, and fails to connect said defendants, or any of them, with any act or transaction appertaining to said franchise; and said evidence wholly fails to connect said defendants, or any of them, with an option agreement to purchase Cash-Way Stores in Tucson, Arizona, and wholly fails to connect

said defendants, or any of them, with the issuance of 151,000 shares of the common capital stock of Clarence Saunders Stores, Inc., to the defendant A. E. Sanders, all of which are alleged in the indictment herein, as a part of said alleged scheme and artifice.

12. The evidence of the Government affirmatively discloses that the said defendants did not, nor did any of them, participate in the setting up as an asset on the books of said corporation, said franchise agreement between A. E. Sanders and the Clarence Saunders Corporation, in the amount of \$151,000.00, and said evidence wholly fails to connect said defendants, or any of them, with said parts or portions of said alleged scheme or artifice.

13. The evidence of the Government wholly fails to connect said defendants, or any of them, with the issuance and delivery [339] to the defendant A. E. Sanders, of 35,000 shares of the common capital stock of said Clarence Saunders Stores, Inc., and fails to connect said defendants or any of them with the sale of three-fifths of said shares, or any other amount or portion thereof, but on the contrary, the evidence of the Government affirmatively discloses that said 35,000 shares of the common stock of said corporation were redelivered to said Clarence Saunders Stores, Inc., and that the defendants did not, nor did any of them, sell or attempt to sell any of the same.

14. There is no competent, relevant or material evidence tending to show that the alleged representations charged as being made by said defendants, or any of them, were false or untrue.

15. The indictment fails to state a public offense under Section 215 of the Criminal Code of the United States of America or any offense whatsoever; that the indictment is fatally duplicitous and multifarious and is vague and uncertain.

16. That the evidence shows one alleged scheme or offense against one group of defendants, and another and distinct scheme or offense against another group of defendants and there is no evidence tending to connect all of the said defendants with the one scheme or offense attempted to be alleged in said indictment.

17. The evidence shows that the scheme to defraud as to Addie Driscoll was fully consummated prior to the time the crime is alleged to have been committed, to-wit, on April 9th, 1930.

18. The Government has failed to prove beyond a reasonable doubt that the letter of April 9th, 1930, was mailed or caused to be mailed by the defendants, or either of them.

19. The evidence fails to show the devising of the scheme [340] alleged in the indictment, and the Statute provides and makes it a crime to devise a scheme to defraud, and not a part of a scheme to defraud, and the Government has, by the evidence,

shown that several parts of the scheme to defraud alleged in the indictment have not been established by the evidence beyond a reasonable doubt.

which motion was denied and overruled by the court, to which ruling the defendants, by their counsel, then and there duly excepted.

Whereupon counsel presented their closing arguments to the jury.

Thereupon the court instructed the jury as follows:

INSTRUCTIONS OF COURT TO JURY

Gentlemen, I will now instruct you as to the law that will guide you in your deliberations in this case:

The defendants in this case, by the first count of the indictment filed herein, are charged with a violation of Section 338, Title 18, United States Code, which makes it a crime to use the United States mails in furtherance of a scheme to defraud.

There were originally several counts to this indictment, but all counts, with the exception of **the first**, have been dismissed.

Five defendants were named in the indictment, to-wit: A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, Charles Greenbaum and William Greenbaum. H. D. Sanders has not been apprehended and the defendant A. E. Sanders has entered a plea of *nole contendere*, and after such plea the

trial of this case has proceeded against Gus, Charles and William Greenbaum, and it is the guilt or innocence of these three defendants that you are [341] called upon to determine.

The statute upon which the first count of the indictment is based reads as follows: "Whoever, having devised or intended to devise any scheme or artifice to defraud, or obtain money or property by means of false or fraudulent pretenses, representations or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money or any obligation or security of the United States, or of any State, territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the 'sawdust swindle' or 'counterfeit money fraud', or by dealing or pretending to deal in what is commonly called green articles, green coin, green goods, bills, paper goods, spurious treasury notes, United States goods, green cigars, or any other names or terms intended to be understood as relating to such counterfeit or spurious article or attempting so to do, place or cause to be placed any letter, post card, package, writing, circular, pamphlet or advertisement, whether addressed to any person residing within or without of the United States, in any post office, or station thereof, or street or

other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pam- [342] phlet, or advertisement, shall be punished'', and so forth.

The indictment in this case is only to be considered as a mere charge or accusation against the defendants and is not of itself any evidence of the defendants' guilt. It is a mere charge of the commission of an offense by the defendants upon which the prosecution and trial is based.

It is your duty, gentlemen, to decide whether or not the defendants are guilty or innocent of the offense as charged, considering all of the evidence submitted to you in the case.

It is not for you to consider the penalty prescribed for the punishment of the offense, and, if you are aware of the penalty prescribed by law, it is your duty to disregard that knowledge. In other words, your sole duty and function is to decide whether the defendants are guilty or innocent. The question of punishment is left wholly to the Court, except as the law circumscribes its power.

In the trial of a case, the Court has a right to question any witness who may be upon the stand,

only for the purpose of eliciting the facts, and, if the Court in this case, in propounding questions to any witness, has led you to believe that the Court had any opinion as to the truth or falsity of the testimony of any witness or as to the guilt or innocence of the defendants, or either of them, it is your duty to wholly disregard such impressions that you may have gathered from the remarks of the Court, as it was not the intent or purpose of the Court to express its opinion upon any such questions. The aim and intent of the Court is to preserve and protect the rights of everybody connected with the trial and to see that the defendants have a fair trial before an impartial jury and to see, if it can, that all the truth is brought out for the information of the court and jury. It has no other desire *or* disposition.. [343]

You will note from the reading of the statute upon which the first count of this indictment is based, it is provided, that "whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, shall, for the purpose of executing such scheme or artifice, or attempting to do so, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement whether addressed to any person residing without or outside of the United States in any post office or station thereof, or street letter box of the United

States, or authorized depository for mail matter, to be sent or delivered by the post office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, post card, package, writing, circular, pamphlet or advertisement, shall be punished as provided by law.”

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find the accused guilty of crime. One is direct or positive testimony of an eye witness to the commission of a crime; and the other is proof by testimony of a chain of circumstances pointing sufficiently strong to the commission of the crime, by the defendant, and which is known as circumstantial evidence. Such evidence may consist of plans laid for the commission of the crime, or any other acts, declarations or circumstances admitted in evidence tending to connect the defendants with the commission of the crime. [344]

Circumstantial evidence is proof of certain facts and circumstances in any certain case, from which the jury may infer other and connected facts, which usually and reasonably follow according to the common experience of mankind.

While crime may be proven by circumstantial evidence, as well as by direct testimony of eye witnesses,

yet the facts and circumstances in evidence should be consistent with each other and with the guilt of the defendants and inconsistent with any reasonable theory of the defendant's innocence.

You are instructed that on the question of the alleged scheme to obtain money or property by means of fraudulent and false pretenses, the Government need not prove all of the fraudulent acts or false representations alleged in the indictment but must prove enough to satisfy your judgment against the presumption of innocence and beyond a reasonable doubt that one or more of the substantial practices, alluded to and specified in the indictment as fraudulent, as to any or all of the defendants, was wilfully and knowingly employed, the question for you to determine is whether enough has been proven within the lines of the charge and not whether all has been proven.

I charge you that the act of placing such letters, post cards, and such in the mail by an agent of the defendant authorized by the defendant to so act for him is the act of the defendant.

You are further instructed that the gist of the offense under Section 338, Title 18, United States Code, that is, an essential element of it, is the prosecution of a fraudulent purpose towards the execution or fulfillment of which the mail is used. One man may devise and accomplish it with or without assistance, but all who, with criminal intent, join themselves, even slightly, to the principal schemers,

are subject to the [345] statute, although they may know only their own share in the aggregate wrongdoing. The law is that whoever directly commits any act constituting an offense defined by any law of the United States, or knowingly aids, abets, counsels, commands, induces or procures its commission, is a principal. So that whoever knowingly aids, abets, counsels, commands, induces or procures the doing of any act constituting a violation of the statute involved, is just as guilty as the principal schemer or schemers.

The testimony in this case shows that there was a plan devised by the defendant Sanders to do certain things, the details of which have been given in evidence here before you, and that the Greenbaums, named herein as defendants, joined the defendant Sanders in furtherance of the undertaking.

The real question in the case—the substantial question in the case—is whether or not the defendants in what they did were acting in good faith. If they were acting in good faith, or, if you have a reasonable doubt as to whether or not they were acting in good faith, then they are entitled to a verdict of acquittal, because, if they were acting in good faith, there could be no scheme on their part to defraud, and the use of the mails in a scheme such as they may have had, if there was no intent to defraud, would not be a scheme for which use of the mails you could in this case find them guilty.

The offense contains two essential elements:

First, that there shall be devised or intended to be devised a scheme or artifice to defraud or for obtaining money or property by means of false representations, pretenses or promises; and, second, that for the purpose of executing such scheme or artifice, or attempting so to do, there shall be placed a letter or post card, writing or circular, in any post office or mail box of the United States, to be sent or delivered by the post office estab- [346] lishment. Both of these elements must be established to your minds beyond a reasonable doubt and to a moral certainty before conviction is authorized. It must be shown beyond a reasonable doubt that the letter described in the indictment was actually sent through the mails, in the interest and furtherance of the scheme charged; that it was mailed in the District of Arizona by some one, defendant or employee, authorized to put it in the mails. When the scheme or artifice to defraud is proven beyond a reasonable doubt, and that the defendants were cooperating in such scheme or artifice, it is not necessary to show that any defendant actually deposited the letter, if the circumstances in evidence show that it was done at the direction or by the authority of the defendants, or any one of hem. It is not necessary that the letter or writing in any instance indicate on its face any fraud, or that it was anything else than an every day and innocent communication. But either by its terms or by extrinsic testimony, it must be shown beyond a reasonable doubt

to have been intended to be a transaction to further some feature of the fraudulent scheme, in furtherance of which the letter is alleged to have been mailed. The official post mark of the post office appearing on the letter or envelope containing the same set up in the indictment, and which has been introduced in evidence, is prima facie proof that said letter was mailed at the point or post office so appearing on said post mark.

You are further instructed that where two or more persons jointly devise and execute a scheme to defraud, they may thereby, in effect, become partners in the criminal purpose. If they do, the acts of each thereafter, during the existence and execution of the scheme, done in furtherance of that execution, may become the acts of all the partners, and each may be convicted of the mailing of a letter which one of the partners [347] mailed or caused to be mailed.

The first question for you to determine is, was there a scheme to defraud? If the evidence in this case fails to satisfy your minds beyond a reasonable doubt that there was devised a scheme to defraud, then it will be unnecessary for you to further consider the evidence, for the reason, that without a scheme to defraud, there could be no conviction under the indictment, as the existence of a scheme to defraud is one of the essential elements of a charge under the mail fraud statute.

The words "scheme" and "artifice", as used in

the statute, include any plan or course of action intentionally devised for the purpose of deceiving and tricking others, and thus fraudulently obtaining their money or property. It is not essential to the making out of a charge that the scheme or artifice should have been successfully carried out. Nor is it a defense for a defendant so charged to show that the persons with whom he dealt and intended to deal received some return for an investment of money, or that they would receive some return for an investment intended to be secured from them. It is essential only that it be shown that the scheme be formed with a fraudulent intent, as alleged in the indictment. It is necessary that the Government prove that the scheme or artifice employed by the defendant was of the kind charged in the indictment.

You are instructed that it is the law that no matter how sound or how practical a scheme or business undertaking may be and no matter how much faith those devising it have in the success of the undertaking, if it is the intention of those devising it or executing it to obtain money by false representations, false pretenses or false promises, it is such a scheme as the statute contemplates, and, if in executing the scheme or undertaking, false representations, false pretenses, or false promises were [348] made by the defendants, or either of them, for the purpose of obtaining money, with knowledge of the falsity thereof, that would constitute a

violation of the statute, provided the mails of the United States are used in furtherance of the consummation of said scheme, as pointed out in these instructions.

It is essential that the letter described in the indictment be shown to have been deposited in the United States mail, for the purpose of being transmitted, and that such letter was delivered by mail according to the direction thereon and that such letter was intended by the defendants to be so transmitted in aid and furtherance of the unlawful scheme or artifice to defraud, if such you find there was. It is not necessary that it be shown that the contents of the letter or writings mailed were of a nature calculated to be effective in carrying out the fraudulent plan, and it is sufficient if, having devised a scheme or artifice to defraud, the defendants deposited, or caused to be deposited, in the Post office, the letter or writing with the thought and intent that they would assist in carrying the scheme into effect, and caused the delivery thereof by the post office establishment of the United States.

The gist of the offense under the first count of the indictment is the misuse of the United States mails. It is not necessary, under the statute on which the first count of this indictment is brought, that a fraudulent scheme or artifice when formed shall contemplate the use of the United States mails as a means of its execution, as the use of the mails in furtherance of a fraudulent scheme or artifice

may be an afterthought not included in the original fraudulent scheme.

With respect to the question of fraudulent intent, it may be said that its existence or non-existence is to be determined by you from all the facts and circumstances admitted in [349] evidence, and your practical experience and daily observations of the intents and acts of men will materially aid you in determining this matter of intention. The intent with which an act is done may be clearly and conclusively shown by the act itself, or by a series of acts, or by the circumstances under which the acts are committed. In many cases, the actions of men speak their intentions more clearly and truthfully than words.

The intent or intention with which acts are committed is manifest by the circumstances connected with the transactions and the sound mind and discretion of the accused. The intent with which an act is committed, being but a mental state of the party accused, direct proof of it is not required, nor indeed can it ordinarily be so shown; but it is generally derived from and established by all of the facts and circumstances attending the doing of the acts complained of, as disclosed by the evidence. In order for you to determine this question of intent, you will look to all of the evidence in the case, oral and documentary, and to all of the facts and circumstances in connection therewith.

The section of the code which has been read and which it is averred in the indictment the defend-

ants violated, denounces as a crime the mailing or causing to be mailed a letter, pamphlet, or advertisement, etc., in the execution of a scheme or artifice to defraud, and for obtaining money or property by means of false or fraudulent pretenses, representations or promises and the evil sought to be remedied is always important in determining the meaning of the statute. It is common knowledge that nothing is more alluring than the expectation of receiving large returns on small investments. Eagerness to take chances for large gains lies at the foundation of all lottery schemes, and, even when the matter of chance is eliminated, any scheme or plan which holds out the prospect of receiving more [350] than one has parted with appeals to the cupidity of all. A legitimate business or going concern may be used as the basis of a scheme to defraud, and, if a person connected with such legitimate business or going concern devises a scheme for the purpose of defrauding others in connection therewith and uses the mails in the execution of such fraudulent scheme, he would be guilty under the statute. In the light of this, the statute must be read, and, so read, it includes everything designed to defraud by misrepresentations as to the past or present or suggestions and promises as to the future. The significant fact is the intent and purpose. Was the intent a good intent, a bona fide intent, or was the intent to profit unlawfully, knowingly, wilfully and fraudulently at the expense of another.

It is, of course, true that a fraudulent intent is never presumed; on the contrary, the law presumes that all men are honest in their motives and their dealings, their relations with others; that they are always actuated by good faith and must not be adjudged in want thereof or to be inspired by evil intent except upon proof of the same beyond a reasonable doubt. So, too, in this same connection, where a given transaction or series of transactions that may be called in question is reasonably susceptible of two different constructions, one that is fair and honest and in consonance with good faith and the other dishonest and in keeping with the fraudulent intent, then the law says that the jury must adopt the construction in favor of honest, fair dealings and good faith and reject the other looking to the contrary direction.

So, if, in what the defendants did, the transactions they had, the representations they made, and in receipt of the money which was received from various parties you believe that they were acting with entire good faith and that they intended [351] in good faith to carry out the scheme and fulfill the promises as conceived, devised and represented; that they were acting in good faith; then they are not guilty of the offense charged in the indictment. If you have a reasonable doubt as to whether or not that is the case, you should acquit them. If, on the contrary, you believe beyond a reasonable doubt that they were acting with a fraudulent intent, with the intention to deceive and that they

used the United States mail, as charged in the indictment, in furtherance of that sort of fraudulent scheme and intention, then you should find the defendants guilty.

You will note that the indictment charges a certain letter to have been sent through the mail and that it was deposited in the United States mail by the defendants in execution of the scheme to defraud. The letter, standing alone and of itself may not be sufficient to show a fraudulent intent on the part of the defendants but you have the right to consider it in connection with all other evidence in the case, in order to determine with what intent it was so used. Other letters and writings than those set forth in the indictment have been introduced in evidence for the sole purpose of aiding you in determining the intent of the defendants. You have a right to consider these letters, together with other evidence in the case, in determining the questions of intent.

You are further instructed that the evidence in this case shows that the Arizona Clarence Saunders Stores, Inc., one of the corporations mentioned in the indictment, paid certain dividends to some of its stockholders. The Government claims that the corporation had no earnings or profits out of which to pay these dividends and that they were in fact paid out of the capital of the corporation and not out of the earnings, and that they were paid for the purpose of inducing the stockholders [352] and prospective purchasers of stock to believe that the corporation was earning profits.

The term "dividend", as applied to corporation stock or shares, may be defined as that portion of the profits or surplus funds of the corporation which has actually been set apart by a valid act of the corporation for distribution among its stockholders. The term "net profits" or "surplus profits" may be defined as what remains after deducting from the present value of all the assets of the corporation the amount of all liabilities, including capital stock.

With the exception of dividends in liquidation, dividends can be lawfully declared and paid out of net profits only, or conversely stated, when the payment thereof does not impair the capital stock of the corporation.

It is for you to determine from all the evidence in the case whether or not such payments of dividends as you may find were paid by the said corporation were profit payments, that is, whether they were made out of the earned surplus or net earnings of the corporation or out of the capital of the corporation, and you are also to determine, from all the evidence in the case, whether or not such payments, if you find they were made as the Government claims they were, out of the capital of the corporation, were fraudulently made for the purpose of inducing the stockholders and prospective purchasers of stock of the corporation to believe that the corporation was earning profits.

It is common knowledge that most business enterprises are aided by advertisements passing through the mails, and, at every hand we see claims of

capacity, performance, and results which we know cannot stand the test of cross examination. Parties who have anything to sell have the habit of puffing their wares, [353] and we are all familiar with the fact that it is a very prevalent thing in the course of business to exaggerate the merits of goods people have to sell and within any proper reasonable bounds such a practice is not criminal. It must amount to a substantial and wilfull deception before it can be considered criminal.

The intent to defraud in this case, like the intent to defraud in any similar criminal case, is a question of fact and not a question of law and as such question of fact must be found by the jury to be proved by all of the evidence in the case beyond a reasonable doubt and to a moral certainty to justify the jury in finding the defendants, or either of them, guilty.

You are instructed that a man may be visionary in his plans and believe that they will succeed, and yet, in spite of their ultimate failure, be incapable of committing a conscious fraud. Human credulity may include among its victims even the supposed imposter. If you believe that the defendants in this case really entertained the belief of the ultimate success of their project corresponding with the representations, then they did not commit the offense charged. The significant fact is the intent and purpose.

Every normal person is presumed to intend that natural and ordinary results shall attend his voluntary acts.

While a man may not be convicted for acts done in good faith, nevertheless, schemes and devices to induce the making of investments, which plainly would not otherwise be made except for knowingly false representations of material facts and conditions, show culpability which enthusiasm cannot justify nor optimism excuse.

You are instructed that this being a criminal prosecution, each of the defendants is presumed to be innocent until [354] the contrary has been shown beyond a reasonable doubt. This presumption of innocence attends the defendants throughout the trial. The burden of overcoming this presumption rests upon the Government and never reverts to the defendant, and unless the Government has satisfied this requirement as to each defendant the jury will acquit such defendant.

Everyone accused of crime is presumed to be innocent until proven guilty. During the period of that presumption, one, so accused, may combat the evidence brought against him; or he may, if he choose, meet it in silence. This is his right. For its protection the law imposes corresponding silence upon the prosecutor in court. Neither can validly refer or indirectly call attention to his failure to speak in his own defense. Being innocent in the eyes of the law, he is not called upon to meet accusing testimony by contradiction or explanation. Therefore, no presumption can lawfully be raised or comment lawfully be made upon his failure to do that which the law expressly says he shall not be required to do.

You are instructed that the defendants in a criminal case are not required to satisfy the jury of the existence of any fact, which, if true, is a complete defense. It is sufficient if such defendants create in the minds of the jury a reasonable doubt of the existence of such fact.

The official postmark of the post office appearing on the letter or envelope containing the same set up in the first count of the indictment and which has been introduced in evidence is prima facie proof that said letter was mailed at the point or post office so appearing on the postmark, but is no proof that the defendants, or either of them, personally mailed the same.

You are further instructed that where one of the [355] defendants in the case on trial testifies on behalf of the Government, as a witness against the other defendants, or some of them, the Government, by placing him upon the witness stand, and interrogating him in support of the indictment, vouches for his truth and veracity.

You are instructed that the fact that one of the defendants has pleaded *nole contendere* and does not resist the Government's case against him is not a circumstance to be taken into consideration in considering the guilt or innocence of the other defendants, or any of them, and it is the duty of the Government, nevertheless, to prove the offense as charged in the indictment against each and every other defendant beyond a reasonable doubt and to a moral certainty. And if you should believe

from the evidence that such defendant, so pleading *nolle contendere* and not resisting the Government's case, be guilty of the offense charged, nevertheless, unless you can find beyond a reasonable doubt and to a moral certainty, that the other defendants are guilty of the offense charged in the indictment, it is your duty to acquit such other defendants.

I further instruct you that even though you may find from the evidence that the representations made in the letters and circulars received in evidence on the part of the United States were untrue, nevertheless if the defendants, or any of them, believed such representations to be true, no matter how inaccurate such believe may turn out to be, such belief would be a complete defense.

I have stated to you that the offense may be established by circumstantial evidence; but circumstantial evidence, to warrant a conviction in a criminal case must be of such a character as to exclude every reasonable hypothesis but that of guilt of the offense imputed to the defendant, or, in other words, the [356] facts proved must all be consistent with and point to his guilt only, and inconsistent with his innocence. The hypothesis of guilt should flow naturally from the facts proven, and be consistent with them all. If the evidence can be reconciled either with the theory of innocence or with guilt, the law requires that the defendant be given the benefit of the doubt, and that the theory of innocence be adopted.

The Court instructs the jury that it is not enough, in order to find a defendant guilty on a criminal offense, to suspect that he is guilty thereof, nor even that you believe that there is a strong probability of guilt. It is essential that you believe any such defendant guilty beyond all reasonable doubt, and such belief must be induced by facts and circumstances appearing on the trial which may be considered by you in view of your experience with the ordinary affairs of life.

You are instructed that you are not to be influenced in arriving at your verdict by passion or prejudice against any person. Personal beliefs and feelings not supported by evidence should have no place in entering into your deliberations. Should you fail to heed this admonition you would be violating your oath as juror.

The intent to defraud in this case, like the intent to defraud in any similar criminal case, is a question of fact and not a question of law, to be proved as every other essential fact in the case must be proved.

You are instructed that with respect to the declarations of one defendant made by him outside of the presence of any other defendant, that before such declarations are competent as to any such absent defendant, it must be proved beyond a reasonable doubt, by independent evidence, that the scheme or artifice to defraud alleged in the indictment had been devised, [357] and that such absent defendant was a party thereto. It must

further be established beyond a reasonable doubt that such declaration was made by such defendant, in furtherance of the said scheme or artifice. It is only where knowledge and active participation, or an express or implied ratification of the alleged fraudulent scheme or device can be proved that one defendant is bound by the statements or declarations of another. The fact that the declarations were made before a defendant may have become associated with an alleged scheme or conspiracy, if any there was, does not of itself render the declaration inadmissible against him.

You are further instructed that the burden is upon the Government to prove beyond a reasonable doubt and to a moral certainty as to each defendant that he, or they, or someone under the direction of one or more of the defendants, deposited the mail matter charged as constituting an offense in the United States mails.

The Court instructs the jury that the letter of April 9, 1930, to Addie Driscoll, set forth in the first count of the indictment cannot be regarded as an offense against the United States of America unless you believe that it has been proved beyond a reasonable doubt and to a moral certainty that said letter was mailed in furtherance of a scheme to defraud.

You are instructed that in considering the guilt or innocence of the defendants, or any of them, you cannot take into consideration any of the letters, circulars, or other mail matter, introduced in evi-

dence herein as being sent through the United States mails unless and until you first believe beyond a reasonable doubt and to a moral certainty that the letter to Addie Driscoll, of April 9, 1930, set forth in the first count of the indictment, was mailed by one of the defendants, or [358] under their direction, with the intention of furthering a scheme to defraud, which scheme must itself be proved beyond a reasonable doubt and to a moral certainty.

You are instructed that a corporation may lawfully pay a commission for procuring subscribers to or for selling its capital stock. The stock of an established corporation having a ready sale on the market, may be sold at a profit on a small commission, while stock of a newer or younger corporation may only be sold through greater effort and upon a larger commission. So, an individual or corporation may by force of circumstances be compelled to pay what might seem a high rate of interest, or to give what might seem a large commission in order to raise money, and yet the agreement to pay such interest or such commission may be prompted by honest motives and by sound business judgment. For these reasons, each case must depend upon its own facts and circumstances, and the amount of the commission alone cannot be made the sole criterion of 'fraud.

Gentlemen, you are the sole judges of the facts in this case; also of the credibility of each and every witness who has testified before you and the

weight that you will give to his testimony. In determining the credibility of any witness, you have a right to take into consideration his manner and appearance while giving his testimony, his means of knowledge of the facts to which he has testified, any interest or motive he may have for his testimony, if shown, and the probability or improbability of the truth of his statements, when measured in connection with all other evidence in the case. If you believe that any witness has wilfully sworn falsely as to any material fact, then you have a right to wholly disregard the testimony of such witness, except insofar as the same may be corroborated by other credible evidence or by facts and circum- [359] stances proven or admitted in the case.

In order to convict the defendants of the crime charged in the indictment, it is incumbent upon the Government to prove to you beyond a reasonable doubt and to a moral certainty the truth of each and every material allegation of the indictment. The law raises no presumption against a defendant, but every presumption of law is in favor of his innocence.

A reasonable doubt, as applied to evidence in criminal cases, is such a doubt as you may entertain as reasonable men after a thorough review and consideration of all the evidence, a doubt for which a reason, arising from the evidence or from the want of evidence exists. It is not, however, a fanciful conjecture of the mind, nor the mere pos-

sibility of a doubt, but it is a substantial, well-founded doubt. It is that state of the case which, after a full and fair review of all the evidence, leaves the mind of a juror in such condition that he cannot say he feels an abiding conviction to a moral certainty of the guilt of the accused. It is an actual sincere, mental hesitation, caused by insufficient or unsatisfactory evidence.

While it is true that the Government is required to prove the guilt of the defendants beyond a reasonable doubt, it is not required to prove their guilt to a mathematical certainty. All that the Court and the jury can act upon is belief to a moral certainty and beyond a reasonable doubt.

Now, if, after fully and fairly considering all of the evidence in this case, you entertain such a reasonable doubt as I have defined as to the guilt or innocence of these defendants, then it becomes your duty to resolve that doubt in favor of the defendants and to return a verdict of not guilty. On the other hand, if, after so considering all of the evidence in the case, you are satisfied beyond a reasonable doubt and to a moral cer- [360] tainty that the defendants have committed the acts charged and constituting the crime set forth in the indictment, then it becomes your duty to return a verdict of guilty.

Three forms of verdicts have been prepared for you, one for each defendant, in this form: "We, the jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find the defend-

ant Charles Greenbaum, on the first count, blank". A similar form for each defendant.

If you find the defendants guilty you will write the word, "Guilty", in the blank place there for that purpose. If you find them not guilty just write those words in there. When you have retired to your jury room you will elect one of your number as foreman of the jury and when you have agreed upon a verdict you will cause your foreman to sign that verdict which represents your conclusion and return it into open court.

Your verdict must be unanimous.

You may enter an order to the United States Marshal to defray the expenses of this jury during its deliberations. Swear the bailiff.

(Thereupon the bailiff was sworn to take charge of the jury).

The COURT: If you agree upon a verdict by nine o'clock tonight—is there any objection to a sealed verdict in this case, gentlemen? I am at a loss as to this 13th juror.

Mr. MATHEWS: I think at this stage of the proceedings he is dismissed. The emergency is deemed to have passed when the jury retires.

(Said charge of the court as above set forth comprises all the instructions given to the jury in said cause.)

As the conclusion of the court's instructions to the jury the defendants, by their counsel, did, in the presence of [361] the jury and before they retired to deliberate upon their verdict, take the following exceptions:

Mr. REIN: I want to take an exception, Your

Honor, to one of the instructions which says: "that one of the substantial practices"—I think that is erroneous, without defining what is a substantial practice, and when the Court alluded to a lottery scheme and refers to cupidity, I think that is erroneous and I think the instruction on the payment of dividends constitutes a singling out.

Mr. WHITNEY: I believe in your charge, Your Honor stated generally that the use of the United States mails to defraud was the gist of the offense, which is true as an abstract proposition, but we think it should be restricted to the letter of April 9, 1930, which is the only count in the indictment.

The COURT: I thought that it was. Without proof of the mailing of the letter of April 9, 1930, to Mrs. Driscoll, there could be no conviction in this case.

which exceptions were allowed by the court and noted, but the court refused to instruct the jury further in those particulars.

The jury thereupon retired to consider their verdict, and thereafter and on the 28th day of November, 1934, the jury rendered verdicts finding the defendants guilty.

Whereupon and on the 1st day of December, 1934, and within three days after verdicts of guilty were found, the defendants filed a motion for a new trial which was denied on the 5th day of December, 1934, and an exception noted. (No error is assigned on the denial of this motion for the reason that all the points contained in said motion

are herein contained by way of exceptions to various rulings of the court.)

Whereupon, defendants moved to arrest the judgment, [362] which motion was, on December 5, 1934, denied, and an exception noted. (No error is assigned on denial of this motion for the reason that all the points were and are raised on demurrer and motion to quash the indictment.)

FORASMUCH, as the matters above set forth do not fully appear of record, and in furtherance of justice and that right may be done, the defendants tender and present the foregoing as their Bill of Exceptions in this cause, and pray that the same may be settled and allowed, and signed and approved by the Judge of this Court, and made a part of the record in this cause.

DATED at Phoenix, Arizona, this 5th day of January, 1935.

ALEXANDER B. BAKER

LOUIS B. WHITNEY

LAWRENCE L. HOWE

THEODORE E. REIN

Attorneys for Defendants-Appellants. [363]

CERTIFICATE AND ORDER.

The foregoing Bill of Exceptions was filed on the 7th day of January, 1935, within the time allowed for filing the Bill of Exceptions by Order of the United States District Court for the District of Arizona, dated December 22, 1934, fixing and ex-

tending the time within which the Bill of Exceptions is to be settled and filed with the Clerk of this Court, as of January 11, 1935, which is within thirty days after the taking of the appeal, excluding Sundays and legal Holidays, under Federal law and under the law of the State of Arizona. Said Bill of Exceptions contains all the material evidence given and correctly shows all the proceedings had upon the trial of this cause; and said Bill of Exceptions contains the full charge of the court to the jury and the exceptions of the defendants thereto; and said Bill of Exceptions is in all respects correct, and is hereby approved, allowed, and settled, and made a part of the record herein.

DATED at Phoenix, Arizona, this 7th day of January, 1935.

F. C. JACOBS

United States District Judge for the District of Arizona, who presided at said trial.

Service of a copy of the above Bill of Exceptions acknowledged this 4th day of January, 1935.

CLIFTON MATHEWS

United States District Attorney.

By F. E. FLYNN

Assistant United States District Attorney [364]

[Endorsed]: Bill of Exceptions Filed Jan 7 1935

[Endorsed]: Proposed Bill of Exceptions Filed Jan 5 1935 [365]

Minute Entry of
MONDAY, JANUARY 7, 1935

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, presiding.

[Title of Cause.]

F. S. Flynn, Esquire, Assistant United States Attorney, appears on behalf of the Plaintiff.

Messrs. Baker and Whitney, by L. B. Whitney, Esquire, appear as counsel for the Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, and present to the Court said Defendants' Bill of Exceptions for settlement, and the Court having duly considered the same, and being fully advised in the premises by respective counsel.

IT IS ORDERED that said bill of Exceptions be and the same is hereby settled, allowed and approved. [366]

[Title of Court and Cause.]

NOTICE OF APPEAL

(In Duplicate)

Names and addresses of appellants:

Gus B. Greenbaum, 321 W. Almeria Street,
Phoenix, Arizona.

Charles Greenbaum, 318 South Reeves Driver,
Beverly Hills, California.

William Greenbaum, 144 South Canon Drive,
Beverly Hills, California.

Names and addresses of Appellants' attorneys:

Alexander B. Baker, Louis B. Whitney and
Lawrence L. Howe, 703 Luhrs Tower, Phoenix,
Arizona, and Theodore E. Rein, 10 South
LaSalle Street, Chicago, Illinois.

Offense:

Violation of Section 338, Title 18, United States
Code Annotated. (Use of United States
mails in furtherance of a scheme to defraud.)

Date of Judgment:

December 5th, 1934.

Brief description of judgment or sentence:

Each defendant four (4) years in a Federal
Prison to be designated by the Attorney Gen-
eral, and to pay costs of Prosecution.

Name of prison where now confined, if not on bail:

Each appellant on bail in sum of Five Thou-
sand Dollars (\$5,000.00).

We, the above named appellants, and each of us,
hereby appeal to the United States Circuit Court of
Appeals for the [367] Ninth Circuit from the
judgment above mentioned on the grounds set forth
below.

GUS B. GREENBAUM
CHARLES GREENBAUM
WILLIAM GREENBAUM

Appellants.

Dated: Phoenix, Arizona, this 5th day of De-
cember, 1934.

GROUNDS OF APPEAL:

(1) That the indictment was not presented and returned to the Court as provided by law.

(2) That the indictment fails to set forth facts sufficient to constitute an offense against the United States, or against any law or statute of the United States.

(3) That the indictment is vague, indefinite and uncertain.

(4) That the indictment is duplicitous in that it charges in a single count more than one scheme and more than one offense in violation of Section 1024, Revised Statutes of the United States.

(5) That the evidence is insufficient to sustain the verdict and judgment.

(6) That there was a material variance between the proof and the indictment.

(7) That incompetent, irrelevant and immaterial evidence was admitted over the objections of the appellants. [368]

(8) That hearsay and secondary evidence was admitted over the objections of appellants.

(9) That summaries and financial statements prepared by auditors were admitted in evidence, over the objections of appellants, and the books and records from which such summaries and financial statements were made were not admitted in evidence and were not shown to be correct, nor were such books and records shown to be complete, nor were all of the books of account in court or accessible to appellants or their counsel, and such books

and records were not properly identified and no proper foundation was laid for either their admission in evidence nor the admission in evidence of the summaries and financial statements computed and taken from said books and records and they were hearsay as to appellants.

(10) That cards from the office of the Collector of Internal Revenue at Phoenix, purporting to show the income of the United Clarence Saunders Stores, Inc., and its successor in name, were admitted in evidence over the objections of appellants; that such cards were hearsay and not the best evidence, the original income tax returns, or certified copies thereof, not being produced; that the cards failed to show who signed the original income tax returns and no witness in any way identified the entries on said cards, and the appellants were not shown to have any connection with the preparing of the original income tax returns and were not shown to have any knowledge of same or their contents.

(11) Erroneous instructions were given to the jury.

(12) The Court erroneously failed to instruct the Jury as requested by the appellants.

(13) That the verdict is contrary to the law and the evidence. [369]

To all of which the Court, over the objections of appellants, and each of them, ruled adversely to appellants, and each of them, to which rulings the appellants, and each of them, duly excepted.

Received copy of foregoing Notice of Appeal this 5th day of December, 1934.

CLIFTON MATHEWS
United States District Attorney
Attorney for Plaintiff.

[Endorsed]: Filed Dec 5 1934 [370]

Minute Entry of
THURSDAY, DECEMBER 6, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, presiding

[Title of Cause.]

It appearing to the Court that counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, have served and filed Notice of Appeal herein,

IT IS ORDERED that attorneys for appellants, and the United States Attorney, appear before the Judge of this Court in Chambers, Saturday, December 8, 1934, at the hour of 9:30 o'clock A. M., for such directions as may be appropriate with respect to the preparation of the record on appeal, pursuant to Rule 7 of the Supreme Court of the United States, Rules of Practice and Procedure. [371]

Minute Entry of

SATURDAY, DECEMBER 8, 1934

October 1934 Term

At Phoenix

HONORABLE F. C. JACOBS, United States District Judge, presiding

[Title of Cause.]

F. E. Flynn, Esquire, Assistant United States Attorney, appears for the Government, and Messrs Baker and Whitney, by Alexander B. Baker, Esquire, appear as counsel for Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, pursuant to the Order fixing the time for such directions as the Court may consider appropriate with respect to the preparation of the Record on Appeal,

IT IS ORDERED that the Defendants, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, prepare and file Praecipe for portions of Record required to be forwarded to the United States Circuit Court of Appeals, and that a copy thereof be served upon the Plaintiff not later than Tuesday, December 11, 1934. [372]

[Title of Court and Cause.]

CLERK'S STATEMENT OF
DOCKET ENTRIES

1. Indictment for Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum filed February 28, 1933.

2. Arraignment March 6, 1933.
3. Plea to Indictment April 21, 1934.
4. Motion to withdraw Plea of Guilty denied—None.
5. Trial by Jury November 7, 1934.
6. Verdict of Guilty Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum November 28, 1934.
7. Judgment of 4 years in a penitentiary to be designated by The Attorney General and costs entered December 5, 1934.
8. Notice of Appeal filed December 5, 1934.
Dated at Phoenix, Arizona, December 5, 1934.

[Seal]

ATTEST: J. LEE BAKER

Clerk. [373]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

COME NOW Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, the defendants-appellants in the above entitled cause, and in connection with their appeal make it known that in the records, proceedings, and judgment and sentence appeal from manifest error has intervened to the prejudice of the defendants-appellants, Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, in these things, to-wit:

I.

The Court erred in denying the motions to quash the indictment herein and in failing to hold that

said indictment was not presented and returned to the court as provided by law, because it was not presented to the court in the presence of all of the members of the Grand Jury who found the same.

II.

The Court erred in overruling the separate demurrers of the defendant-appellants to the first count in the indictment, for the following reasons, to-wit: [374]

(a) Because the first count of the indictment fails to set forth facts sufficient to constitute an offense against the United States of America under Section 215 of the Criminal Code of the United States of America (Section 338, Title 18, U.S.C.A.) or under any other law *of* statute of the United States of America.

(b) Because the first count of the indictment is vague, indefinite, uncertain and incomplete.

(c) Because the first count of the indictment is duplicitous and multifarious, in that it charges more than one scheme or artifice to defraud, and more than one offense in violation of Section 1024 of the Revised Statutes of the United States (Section 557, Title 18, U.S.C.A.).

III.

The Court erred in denying the motion of defendants-appellants, made at the conclusion of the Government's case, to direct the jury in said cause to return a verdict of not guilty for the reason that

there was no substantial or competent evidence to sustain the charge made in the first count of the indictment.

IV.

The Court erred in denying the motion of the defendants-appellants, made at the close of all the evidence, that the court direct the jury in said cause to return a verdict for the defendants-appellants, finding them not guilty, upon the ground and for the reason that there was no substantial or competent evidence to sustain the charge made in the first count of the indictment, and upon the further grounds, to-wit:

(a) That there was no competent or substantial evidence to [375] show that the defendants named in the first count in the indictment devised or intended to devise a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations and promises as charged therein.

(b) That there was no competent or substantial evidence to show that the representations and promises charged as being made by defendants-appellants were false and fraudulent, as charged.

(c) That there was no competent or substantial evidence to show that the defendants-appellants mailed or caused to be mailed the letter set forth in count 1 of the indictment.

V.

The Court erred in denying dependants-appellants' motion to direct the jury to return a verdict, finding them not guilty, at the close of all the evidence, for the reason that the evidence introduced by the plaintiff United States of America in attempted support of the allegations contained in the first count of the indictment constituted a material variance from the charge made in the first count of the indictment, in this, to-wit:

(a) That the first count of the indictment charged that the defendants-appellants sold to the persons to be defrauded more than three-fifths of the 35,000 shares of common stock issued and sold to the defendant A. E. Sanders, whereas the evidence showed that the stock sold by the defendants-appellants came from the 151,000 shares of common stock issued to A. E. Sanders pursuant to a permit of the Arizona Corporation Commission.

(b) That the first count of the indictment charged that the defendant-appellants authorized and paid a semi-annual dividend on June 29, 1929, whereas there was no evidence of any [376] such dividend being paid, but the evidence related to a dividend of July 30, 1930.

(c) That the first count of the indictment charged, as a further part of said scheme and artifice, that H. D. Sanders and his associates organized and incorporated the Piggly-Wiggly Holding Corporation, afterwards changed to the U-Save Holding Corporation, whereas the evidence show that

the defendants-appellants had no act or part in said transaction and were not connected therewith in any way.

(d) That the first count of the indictment charged that the U-Save Holding Corporation took charge of the assets of the United Clarence Saunders Stores, Inc. and removed \$100,000.00 worth of merchandise from Arizona to Los Angeles, whereas the evidence showed that the defendants-appellants had no act or part in said transaction.

(e) That the first count of the indictment charged that the letter to Addie Driscoll was mailed for the purpose and with the intent on the part of the defendants-appellants of executing the scheme and artifice, whereas the evidence shows that the scheme to defraud as to Addie Driscoll was fully executed prior to the time the crime is alleged to have been committed, to-wit, ~~July 9, 1930.~~

VI. *April*

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 5, being a document which in substance is as follows:

Articles of Incorporation of Piggly-Wiggly Holding Corporation of Yuma, dated April 27, 1929, and filed in the office of the Arizona Corporation Commission on May 15, 1929, at the request of Wm. H. Westover, of Yuma, Arizona. Incorporators: H. D. [377] Sanders

and S. I. Haley, both of Yuma, Arizona. Authorized Capital Stock: 60,000 shares of Class A common and 60,000 shares of Class B common, both without nominal or par value, and 40,000 shares of preferred stock at \$100.00 each. Provides for 7% annual dividends on preferred stock. Officers named in articles of incorporation: H. D. Sanders, President and Director; Philip Thorp, Vice-President and Director; S. I. Haley, Secretary-Treasurer and Director. Principal Business: To own and operate retail mercantile stores at such places as the company may deem proper, etc.

for the reason that the defendants-appellants were not shown to have any connection or relation with said Piggly-Wiggly Holding Corporation of Yuma, and that such document as to the defendant-appellants was hearsay.

VI.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 6, a document which in substance is as follows:

Certificate of Amendment of Articles of Incorporation of Piggly-Wiggly Holding Corporation of Yuma, dated February 19, 1930, filed in the office of the Arizona Corporation Commission at the request of Wm. H. Westover of

Yuma, Arizona, on February 24, 1930. Certificate signed by H. D. Sanders and S. I. Haley. The purpose of the certificate was to change the name of the corporation to "U-Save Holding Corporation".

for the reason that the defendants-appellants were not shown to have any connection or relation with said Piggly-Wiggly Holding Corporation of Yuma, and that such document as to the defendants-appellants was hearsay.

VIII.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 8, [378] a document which in substance is as follows:

Articles of Incorporation of Piggly-Wiggly Southwestern Company, dated July 9, 1927. Filed in the office of the Arizona Corporation Commission July 13, 1927, at the request of Duane Bird of Nogales, Arizona. Incorporators: A. E. Sanders and Lelia Sanders, of Nogales, Arizona. Capital Stock: \$200,00.00, divided into 10,000 shares of common stock at \$10.00 par value, and 1,000 shares of preferred stock at \$100.00 par value. Business proposed to be transacted: To carry on and engage in the business of establishing, maintaining and operating "Piggly-Wiggly" stores; to deal in groceries, provisions, etc.

for the reason that the defendants-appellants were not shown to have any connection with said company and for the further reason that there was nothing charged in the first count of the indictment relating to said company.

IX.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 9, a document which in substance is as follows:

Annual Report of Arizona Clarence Saunders Stores, Inc., at the close of business May 31, 1929, filed in the office of the Arizona Corporation Commission July 1, 1929, at the request of Arizona Clarence Saunders Stores, Inc., Post Office Box 2587, Tucson, Arizona. Executed and sworn to by A. E. Sanders, President, and E. B. Horne, Secretary, on June 29, 1929, at Nogales, Santa Cruz County, Arizona. This report shows:

Assets	\$454,280.96
Liabilities	19,024.62
Accumulations	2,516.93
Amount of Capital Stock—	
Paid up and issued	432,739.41
Real Property at Tucson—	
7 stores, 1 warehouse	leased
Real Property at Phoenix—	
3 stores, 1 warehouse	leased

Personal Property: Phoenix and Tucson—fixtures and equipment	50,641.73
Merchandise Stocks	70,115.88
	[379]

for the reason that the defendants-appellants were not shown to have any connection with such annual report and that it was hearsay as to them.

X.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 13, a document which in substance is as follows:

Annual Report of U-Save Holding Corporation (formerly Piggly-Wiggly Holding Corporation) at the close of business June 30, 1930, executed and sworn to in Yuma County, Arizona, by H. D. Sanders, as President, and S. Idelle Haley, as Secretary, July 22, 1930; filed in the office of the Arizona Corporation Commission July 23, 1930, at the request of Piggly-Wiggly Yuma Co. Shows:

Assets	\$956,662.59
Liabilities	9,915.47
Accumulations	504,767.22
Amount of Capital Stock	
Paid up and Issued	337,070.00
Stock contracts	104,910.00

Real Property Owned:

Situate—Yuma, Ariz.	42,927.21
San Diego, Cal.	1,300.00
Somerton, Ariz.	5,000.00
El Centro, Calif.	21,179.68

Personal Property—Situate:

Yuma, Arizona: Stock, fixtures & merchandise	7,177.47
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Warehouse equipment and merchandise	87,445.81
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Piggly-Wiggly stock	130,695.00
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Imperial, California:

Store: fixtures & merchandise	9,506.43
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Officers, in addition to the President and Secretary, are given: Vice-Presidents, Philip H. Thorp and C. L. Patterson. The addresses of all the officers are given as Yuma, Arizona, except Philip H. Thorp, whose address is given as San Bernardino, California.

for the reason that there was no connection shown between U-Save Holding Corporation and the defendants-appellants, and for the further reason that the defendants-appellants are not charged [380] in the first count of the indictment with having had any connection with said corporation.

XI.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 89, which reads in substance, as follows:

UNITED SANDERS STORES, INC.

STATEMENT OF PROFIT AND LOSS		Year 1929	
Grocery Sales	816,695.36		
Market Sales	179,709.22		
Gross Sales			996,404.58
Merchandise Purchased	1,103,646.32		
Less Inventory			
December 31, 1929	250,726.77		
Cost of Goods Sold			852,919.55
Gross Profit			143,485.03
Less Operating Expense:			
(Detail of Items omitted)			262,190.62
NET LOSS ON SALES			118,705.59
Plus Other Expense:			
Interest	3,473.61		
Unclassified Losses	1,531.42		
Loss on Bad Checks	811.87	5,816.90	
Less Miscellaneous Gains:			
Earned Discount	9,315.75		
Unclassified Gains	6,321.32	15,637.07	9,820.17
Total Operating Loss			\$108,885.42
Analysis of Surplus Account:			
Operating Loss for 1929			\$108,885.42
Payment of Dividend on Preferred Stock			25,743.16
Amortization of Organization Expense			10,000.00
TOTAL SURPLUS DEFICIT			\$144,628.58

for the following reasons:

(a) That sufficient opportunity had not been accorded the defendants-appellants to examine the sources from which said profit and loss statement was made.

(b) That the books, records, data and memoranda that underlie said statement had not been introduced in evidence.

(c) That there had been no proper identification of the books and records that were in court.

(d) That there was no attempt to produce the people who made the entries, or anyone having personal knowledge of the facts, and that there had been no showing that such persons were dead, insane, or beyond the reach of process of the court, and that they were not available.

(e) That there was no underlying testimony as to the correctness or regularity of the entries from which said profit and loss statement was compiled.

(f) That the original entries were not in Court and the books and records were shown to be not complete.

(g) That said profit and loss statement was not the best evidence.

(h) That said profit and loss statement was hearsay as to defendants-appellants.

XII.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-

appellants, Government's Exhibit 90, which is in substance as follows, to-wit: [382]

UNITED SANDERS STORES, INC.

PROFIT AND LOSS STATEMENT NINE MONTHS ENDED 9/30/30

Sales

Retail Grocery	\$1,029,675.94
" Meats	293,921.72
Wholesale	351,033.80

Total Sales \$1,674,631.46

Cost of Sales

Retail Grocery	842,076.42
" Meats	223,654.48
Wholesale	331,294.54

Total Cost of Sales 1,397,025.44

Gross Profit from Sale 277,606.02

Expenses:

(Detail of Items omitted) 332,172.57

Net Loss Before Other Income & Expense 54,566.55

Other Income

Interest	161.51
Discount	8,492.75
Freight & Delivery	460.32
	9,114.58

Other Expenses

Cash Discount allowed	571.34
Interest Paid Miscl.	2,196.55
" " Bonds	2,917.15
P & L Items	3,779.64
Cash Short	1,128.54
	10,593.22
	1,478.64

Net Loss to Surplus 56,045.19

Profit & Loss Items

Loss in Merchandise Inventory	5,678.65
Miscl. Items	67.29

5,745.94

Less: Sundry Credits 2,066.30

3,779.64

for the following reasons:

(a) That sufficient opportunity had not been accorded the defendants-appellants to examine the sources from which said profit and loss statement was made.

(b) That the books, records, data and memoranda that underlie said statement had not been introduced in evidence.

(c) That there had been no proper identification of the books and records that were in court [383]

(d) That there was no attempt made to produce the people who made the entries, and that there had been no showing that such persons were dead, insane, or beyond the reach of process of the court, and that they were not available.

(e) That there was no underlying testimony as to the correctness or regularity of the entries from which said profit and loss statement was compiled.

(f) That the original entries were not in Court and the books and records were shown to be not complete.

(g) That said profit and loss statement was not the best evidence.

(h) That said profit and loss statement was hearsay as to defendants-appellants.

XIII.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of defendants-

appellants, Government's Exhibit 91, which is in words and figures as follows, to-wit:

UNITED SANDERS STORES, INC.	
BALANCE SHEET—September 30, 1931	
Assets	
Current Assets	
Cash in Bank	1686.81
Cash & Imprest Funds	7225.00
Accts. Receivable	25658.82
Merchandise Inventory	299782.45
Stock Subscriptions Receivable	91657.95
	<hr/>
Total Current Assets	426012.03
Investments	
Miscl. Stocks & Bonds	4,617.29
United Sanders Debenture Bonds	80000.00
Piggly Wiggly Southwest Co.	143880.00
	<hr/>
Total Investments	228497.29
	[384]
Fixed Assets	
Fixtures & Equipment	198899.26
Less: Allowance for Depreciation	30355.98
	<hr/>
Residual Value	168543.28
Deferred Items	
Supplies on Hand	1579.59
Prepaid Expense	16959.70
Recoverable Deposits	2471.16
Organization Expense	304644.88
	<hr/>
Total Deferred Items	325655.33
Concessions	151000.00
	<hr/>
	1299707.93
Liabilities & Net Worth or Capital	
Current Liabilities	
Bank Overdraft	12456.32
Piggly Wiggly Southwest Co.	8774.70
Accounts Payable	28396.62
Accrued Payroll	3178.00
Notes Payable	18156.77
Contracts "	3209.49
	<hr/>
Total Current Liabilities	74171.90

Fixed Liabilities		
Bonds or Debentures		158900.00
		<hr/>
Total Liabilities		233071.90
Capital and Surplus:		
Preferred Stock Issued and Outstanding	877000.00	
Common " " " "	405014.50	
		<hr/>
Total Capital Stock	1282014.50	
Deficit	215378.47	
		<hr/>
Net Worth September 30, 1934		1066636.03

for the following reasons:

(a) That sufficient opportunity had not been accorded the defendants-appellants to examine the sources from which the said profit and loss statement was made.

(b) That the books, records, data and memoranda that underlie said statement had not been introduced in evidence.

(c) That there had been no proper identification of the [385] books and records that were in Court.

(d) That there was no attempt made to produce the people who made the entries, and that there had been no showing that such persons were dead, insane, or beyond the reach of process of the court, and that they were not available.

(e) That there was no underlying testimony as to the correctness or regularity of the entries from which said profit and loss statement was compiled.

(f) That the original entries were not in court and the books and records were shown to be not complete.

(g) That said profit and loss statement was hearsay and not the best evidence.

(h) That said profit and loss statement was hearsay as to the defendants-appellants.

XIV.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 43, which is in words and figures as follows, to-wit:

"BOND AND MORTGAGE CORPORATION
Security Building
Phoenix, Arizona

April 9, 1930.

Addie Driscoll,
Box 103,
Douglas, Arizona.

Dear Madam:

Answering your letter of April 8th, we wish to advise that the Common stock of the United Clarence Saunders Stores, Inc., is being offered to the public through this company for \$10.00 per share.

Trusting that this is the information you desire, we are, [386]

Yours very truly,

BOND AND MORTGAGE CORPORATION,
By: (Signed) M. LOVELAND,
Assistant Secretary."

for the reason that there was no adequate proof that the defendants-appellants mailed or caused to be mailed said letter, and for the further reason that there was no showing that the defendants-appellants had devised or intended to devise a scheme or artifice to defraud or to obtain money by false pretenses, representations and promises, as alleged in the first count of the indictment.

XV.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 109, a document headed—"INCOME TAX, Ariz. Clarence Saunders Stores, Tucson, Arizona"—being Treasury Department, U. S. Internal Revenue, Form 649, Revised Sept. 1926, (for corporations), which reads in substance, as follows:

	1928	1929	1930
(Date of Organization) 10/25/28			(Name of President) ?
(State in Which Organized) Ariz.			(Name of Treasurer) ?
Return filed	3/15/29	2/25/30	
List (month-year)	851 11		
List (page-line)		85 217	
Gross Income	\$	\$125 588 45	\$
Net Income	Loss None	150 271 53	See card United Sanders Stores, Inc.

for the following reasons: [387]

- (a) That it is not the best evidence.
- (b) That it is hearsay as to the defendants-appellants.
- (c) That the document is not signed by anyone and shows on its face that it is not complete.
- (d) That there was no foundation laid for the introduction of the document.
- (e) That there was no opportunity afforded the defendants-appellants to examine the person who made the entries on the document, or to cross examine the person who made the original income tax return.
- (f) That there was no showing as to who signed the original income tax returns.
- (g) That the original income tax returns were in the custody of the Government and under the Act of Congress (February 24, 1919) were available as primary original evidence.

XVI.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 110, a document headed—"INCOME TAX, United Sanders Stores, Inc. (formerly Ariz. Clarence Saunders Stores), 305 So. 2nd Ave., Phoenix, Ariz.", being Treasury De-

partment, U. S. Internal Revenue, Form 649, Revised Sept. 1926, (for corporations), which reads in substance, as follows:

[388]

(Date of Organization) Nov. 23—1928	(Name of President)		
(State in Which Organized) Arizona	(Name of Treasurer) Geo. J. Erhart, Receiver		FINAL (Remarks)
	1930	1931	1932
Return filed	3-16-31	10-3-1932	3-20-33
List (month-year)	86 349	86 644	86 263
List (page-line)			
Gross Income	306 054 21	— —	— —
Net Income Loss	135 626 67	— —	— —
			Out of busi- ness Final
Total Tax	none	— —	
	In receivership and process of liquidation		

for the following reasons:

- (a) That it is not the best evidence.
- (b) That it is hearsay as to the defendants-appellants.
- (c) That the document is not signed by anyone and shows on its face that it is not complete.
- (d) That there was no foundation laid for the introduction of the document.
- (e) That there was no opportunity afforded the defendants-appellants to examine the person who made the entries on the document, or to cross examine the person who made the original income tax return.
- (f) That there was no showing as to who signed the original income tax return.

(g) That the original income tax returns were in the custody of the Government and under the Act of Congress (February 24, 1919), were available as the best evidence.

XVII.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 53, a document which in substance is as follows: [389]

A mimeographed copy of letters to stockholders of United Clarence Saunders Stores, Inc., dated September 29, 1930, mimeographed signature of A. E. Sanders, President, calling attention to stockholders meeting to be held November 1, 1930, for the purpose of changing the name to United Sanders Stores, Inc. Also states that under the present franchise agreement with Clarence Saunders they have to pay him 1/2 of 1% of the gross volume of business, which amounts to about \$10,000.00 a year, and that under the new plan they will be able to increase their volume of business and save the stockholders this immense royalty by doing away with the Clarence Saunders franchise agreement. Attached to letter is a notice of special meeting to stockholders and blank proxy.

for the reason that such document was hearsay and not binding upon the defendants-appellants.

XVIII.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 54, a document headed "United Clarence Saunders Stores, Inc., 305 South Second Avenue, Phoenix, Arizona", and being a notice to stockholders, dated October 6, 1930, which is in substance as follows:

It states that the primary purpose of the meeting is to change the name of the company to United Sanders Stores, Inc., of Arizona, and to change the plans of the company in respect to operation and management of additional stores proposed to be established. It calls attention to the royalty payments to the Clarence Saunders Corporation mentioned in Exhibit 53. It states that the stores would be operated under the name of Sanders U-Save System and would control forty-two stores and five warehouses of four separate corporations, namely, United Clarence Saunders Stores, Inc., Piggly-Wiggly Southwestern Company, Piggly-Wiggly Yuma Company and U-Save Holding Corporation, all doing a business of over \$3,000,000.00 annually and having assets of approximately \$2,800,000.00. It gives the qualifications of Mr. H. D. Sanders, who will assume control of the Arizona unit, and his associates K. C. Can Atta, A. M. Kaler, Warfield Ryley, Cy Measday, J. S. Mackin and A. E. Sanders. It states

that a Re-sales Department to handle the resale of the corporate securities will be established which will create an active market for the securities. [390]

for the reason that said exhibit did not tend to connect the defendants-appellants with the charge contained in the first count of the indictment and was not binding upon them, and was hearsay.

XIX.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 56, being a mimeographed letter to stockholders of United Sanders Stores, Inc., dated January 15, 1931, signed by H. D. Sanders, President, and G. C. Partee, Secretary, which is in substance as follows:

It states that the company has expanded, has in operation twenty-six retail stores in Arizona, owns practically all of the stock of Piggly-Wiggly Southwestern Company; that the year 1930 had been a hard year; that most of the difficulties have been overcome; that the U-Save Holding Corporation has purchased the control of the common stock and is co-operating in the operation of the business which will be very beneficial to the stockholders. It predicts the reduction in expense, the opening of new stores and states that the company is in good financial position.

for the reason that said defendants-appellants had no connection with said Exhibit or the matters and things therein stated, and it was hearsay as to them.

XX.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 64, which is a form letter from United Sanders Stores, Inc., dated January 10, 1931, addressed to the stockholders of the company, signed by G. C. Partee, Secretary, which Exhibit is in substance [391] as follows:

It states the rapid progress made by the company; that on account of business depression it took a market loss on merchandise. It comments on the financial difficulties of Clarence Saunders Stores, Inc., at Memphis, Tennessee; that the failure affected all units operating under the concessions; that the company was required to change its set-up and its policy of expansion; that in October, 1930, the U-Save Holding Corporation purchased control of the common stock and since that time has been in active management of its affairs with the reduction in expenses of \$50,000.00 per annum; that the U-Save Holding Corporation purchased the warehouse stocks of the company at actual inventory and agreed to serve the company at cost, plus five percent; that the warehouse stocks inventoried at approximately

\$110,000.00 and that U-Save Holding Corporation issued in payment \$60,100.00 in preferred stock and paid off \$40,000.00 of current liabilities that the deal was very advantageous to the stockholders of United Sanders Stores and concludes with a statement of assets and liabilities as follows:

Current Assets	\$423,652.91
Fixed Assets	170,316.93
Net Outside Investments	87,685.10
Deferred Assets	74,076.47
Organization and Development	259,963.24
Concessions	151,000.00
Total Accounts Payable	63,491.17
Payroll	2,069.66
Notes	10,689.74
Debenture Bonds outstanding—	
Less in Treasury	83,900.00
Net Worth	939,944.06

for the reason that said Exhibit was incompetent and not binding upon, or applicable to, the defendants-appellants, and was pure hearsay as to them.

XXI.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibits 68 and 69, purporting to evidence the dividend account of the Arizona Clarence Saunders Stores, Inc. with the Valley

Bank of Phoenix, Arizona. Said Exhibits are in substance as follows: [392]

EXHIBIT 68:

Shows an original deposit on September 4, 1929, of \$576.79, and thirty-seven checks drawn against the same in varying amounts, with a withdrawal of the entire balance of \$470.40 on December 13, 1929.

EXHIBIT 69:

Shows checks drawn and balances from time to time from November 4, 1929, to December 13, 1929, both inclusive, duplicating in part, and furnishing no information in addition to Exhibit 68.

for the following reasons:

(a) That said Exhibits were not properly identified.

(b) That said Exhibits are hearsay as to defendants-appellants.

(c) That there was no connection shown between said Exhibits and the defendants-appellants.

XXII.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 76, which is in substance as follows:

Instructions to The Valley Bank at Phoenix, Arizona, dated July 2, 1929, with reference to account in that bank, giving copy of resolution passed by the Board of Directors at a meeting held June 29, 1929, authorizing A. E. Sanders, President, to sign or endorse checks, drafts, notes, or other negotiable paper or securities on any and all depositories of Arizona Clarence Saunders Stores, Inc., without any countersignature, and authorizing Warfield Ryley to sign checks or drafts on any banks or depositories of the Arizona Clarence Saunders Stores, Inc., when duly countersigned by Willis M. Dent, M. V. Lee or E. B. Horne. The signatures at the bottom of these instructions are: A. E. Sanders, E. B. Horne, Warfield Ryley, Willis M. Dent, M. V. Lee and E. A. Lasalle.

for the following reasons:

- (a) That it was not the best evidence.
- (b) That it was hearsay as to the defendants-appellants. [393]

XXIII.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 107, being part of the ledger account of Greenbaum Brothers in the books of the United Clarence Saunders Stores, Inc., which in substance is as follows:

Account of Greenbaum Brothers, 700 Security Building, Phoenix, Arizona, in capital stock ledger, showing various certificates of common stock cancelled and re-issued, between May 24, 1929, and November 18, 1929. The last item in this account, however, is dated June 30, 1930, whereby 200 shares were transferred to Bond and Mortgage Corporation, balancing out the account; also showing stock issued to them out of A. E. Sanders' 151,000 shares.

Notation: May 2, 1929—Cert. 272 for 3,850 shares were issued to the Greenbaum Brothers from A. E. Sanders' stock.

December 12, 1929—Cert. 963 for 5,000 shares, and Cert. 962 for 500 shares, were issued to the Greenbaum Brothers from A. E. Sanders' stock.

December 12, 1929—Cert. 965 for 2105 shares was issued to the Greenbaum Brothers from A. E. Sanders' stock.

June 30, 1930—JV-251—200 shares transferred to Bond and Mortgage Corporation, balancing out the account.

for the reason that it did not tend to prove any offense charged in the first count of the indictment, and that the proper *d*oundation had not been laid for its introduction, and that it was hearsay as to the defendants-appellants.

XXIV.

The Court erred in admitting in evidence in behalf of the plaintiff United States of America, over the objection and exception of the defendants-appellants, Government's Exhibit 104, being part of the ledger account of Bond and Mortgage Corporation [394] in the books of the United Clarence Saunders Stores, Inc., which in substance is as follows:

Account of Bond and Mortgage Corporation in capital stock ledger, consisting of 17 pages (contained in Government's Exhibit 92 for identification) showing cancellation and re-issuance of various certificates of common stock owned by Bond and Mortgage Corporation, between December 18, 1929, and February 14, 1931, being part of the stock transferred to it out of A. E. Sanders' 151,000 shares; also showing detail of certificates issued to it.

for the reason that it did not tend to prove any offense charged in the first count of the indictment, and that the proper foundation had not been laid for its introduction, and that it was hearsay as to the defendants-appellants.

XXV.

The Court erred in sustaining an objection of the plaintiff United States of America, over the exception of defendants-appellants, to an offer of proof

by the defendants-appellants, in substance as follows:

At this time the defendants Greenbaum, and each of them, avow that the witness Brandt would testify that at such conference and in the presence of the persons named, he did state to them that there was a shortage of \$5,000.00 in the account of the United Clarence Saunders Stores, and that he was responsible for the shortage, and that out of the \$5,000.00 by him taken from the United Clarence Saunders Stores, he had checked out the sum of \$2,500.00 for his own personal use, in separate checks, and if asked how this shortage of funds from the Stores Company was effectuated or consummated, would testify in response thereto that checks of the Stores Company were made up in duplicate, and that the original check figuring in this transaction, that is, the check of \$5,000.00 in its original form showed payable to the Phoenix Packing Company, but that the duplicate check showed United Clarence Saunders Stores, and that the explanation on the duplicate check was that the sum of \$5,000.00 had been advanced to the Kansas unit, and that accordingly the books of account of the Sanders Stores here showed an entry or a charge of \$5,000.00 as organization and development expense, when in truth and in fact such entry was false and was but a device to cover up

the speculation or embezzlement of the witness Brandt. We avow that if permitted to ask the witness Brandt as to the time in which he [395] took \$5,000.00 of the Stores Company's money for his own personal use, he would state it was taken around about the 26th or 27th of June, 1930, in the form of check on the Saunders Stores, signed by himself, drawn upon the First National Bank of Phoenix and that the withdrawal was charged against the Kansas unit to organization and development expenses. We will avow if permitted to ask the witness Brandt what disposition was made by him of the money withdrawn from the Saunders Stores he would testify that he deposited \$2,000.00 of that embezzled sum in the Commercial National Bank of Phoenix, and that he afterwards withdrew from the Commercial Bank from time to time the sum in question, and that he subsequently deposited \$1,000.00 of the funds so taken from the Stores Company to his personal account in the First National Bank, and that the money so taken by him through the scheme was used for his own personal use, and that it was covered up by a fictitious entry in the books of the company, and we avow further that it can be developed through this witness that many of the books and records of the company were kept by him at his own home, and not at the company office, for the purpose of concealing these

transactions, which books and records are not now present in court.

for the reasons:

(a) That defendants-appellants should have been allowed to test the credibility of the witness.

(b) That such evidence offered would tend to show that the books and records of the corporation were incorrect.

XXVI.

The Court erred, over the exception of defendants-appellants, in refusing to admit in evidence defendants-appellants' Exhibit "F" for identification, consisting of four checks, said checks being offered for the purpose of impeaching the witness Tom H. Brandt, and further establishing that the books and records of said corporation, Government's Exhibits 34 to 39 for identification, both inclusive, did not correctly set forth the transactions of said corporation, which said checks are in substance as follows:

Check No. 16, of the Phoenix Packing Company, drawn on The Valley Bank of Phoenix, Arizona, dated Phoenix, Arizona, 7/1/1930, signed by Tom H. Brandt as Secy-Treas., payable to the order of Tom H. Brandt, in the sum of \$500.00, and endorsed Tom H. Brandt, showing payment thereof on July 1, 1930.

Unnumbered check of the Phoenix Packing

Company, drawn on The Valley Bank of Phoenix, Arizona, 7/2/1930, signed by Tom H. Brandt [396] as Secy-Treas., payable to the order of Tom H. Brandt, in the sum of \$2,000.00, and endorsed Tom H. Brandt, showing payment thereof on July 3, 1930.

Check No. 41, of the Phoenix Packing Company, drawn on The Valley Bank of Phoenix, Arizona, dated Phoenix, Arizona, 7/2/1930, signed by Tom H. Brandt as Secy-Treas., payable to the order of Tom H. Brandt, in the sum of \$500.00, and endorsed Tom H. Brandt, showing payment thereof on July 25, 1930.

Check No. 42, of the Phoenix Packing Company, drawn on The Valley Bank of Phoenix, Arizona, dated Phoenix, Arizona, 7/24/30, signed by Tom H. Brandt as Secy-Treas., payable to the order of Tom H. Brandt, in the sum of \$100.00 and endorsed Tom H. Brandt, showing payment thereof on July 24, 1930.

XXVII.

The Court erred in giving the following instruction to the jury during the course of the charge to the jury, to-wit:

“You are instructed that on the question of the alleged scheme to obtain money or property by means of fraudulent and false pretenses, the Government need not prove all of the fraudulent acts or false representations alleged in the

indictment but must prove enough to satisfy your judgment against the presumption of innocence and beyond a reasonable doubt that one or more of the substantial practices, alluded to and specified in the indictment as fraudulent, as to any or all of the defendants, was wilfully and knowingly employed, the question for you to determine is whether enough has been proven within the lines of the charge and not whether all has been proven.”

which said instruction was duly excepted to upon the ground that the expression “substantial practices” was indefinite and undefined and tended to confuse the jury, and that the expression “within the lines of the charge” was indefinite, uncertain and tended to confuse the jury.

XXVIII.

The Court erred in giving the following instruction to the jury during the course of the charge to the jury, to-wit:

“It is common knowledge that nothing is more alluring [397] than the expectation of receiving large return on small investments. Eagerness to take chances for large gains lies at the foundation of all lottery schemes, and, even when the matter of chance is eliminated, any scheme or plan which holds out the prospect of receiving more than one has parted with appeals to the cupidity of all.”

to which said instruction the defendants-appellants duly excepted upon the ground that the same was prejudicial, unnecessary and not justified by the record.

XXIX.

The Court erred in giving the following instruction to the jury during the course of the charge to the jury, to-wit:

“You are further instructed that the evidence in this case shows that the Arizona Clarence Saunders Stores, Inc., one of the corporations mentioned in the indictment, paid certain dividends to some of its stockholders. The Government claims that the corporation had no earnings or profits out of which to pay these dividends and that they were in fact paid out of the capital of the corporation and not out of earnings, and that they were paid for the purpose of inducing the stockholders and prospective purchasers of stock to believe that the corporation was earning profits.

The term ‘dividend’, as applied to corporation stock or shares, may be defined as that portion of the profits or surplus funds of the corporation which has actually been set apart by a valid act of the corporation for distribution among its stockholders. The term ‘net profits’ or ‘surplus profits’ may be defined as what remains after deducting from the present value of all the assets of the corporation the

amount of all liabilities, including capital stock.

With the exception of dividends in liquidation, dividends can be lawfully declared and paid out of net profits only, or conversely stated, when the payment thereof does not impair the capital stock of the corporation.

It is for you to determine from all the evidence in the case whether or not such payments of dividends as you may find were paid by the said corporation were profit payments, that is, whether they were made out of the earned surplus or net earnings of the corporation or out of the capital of the corporation, and you are also to determine, from all the evidence in the case, whether or not such payments, if you find they were made as the Government claims they were, out of the capital of the Corporation, were fraudulently made for the purpose of inducing the stockholders and prospective purchasers of the stock of the corporation to believe that the corporation was earning profits." [398]

to which said instruction defendants-appellants duly excepted upon the ground that the same constituted a singling out of one part or portion of the evidence, and upon the ground that the same did not correctly state the law as to the payment of dividends.

WHEREFORE, the said Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, defendants-appellants in the above entitled cause, by

reason of the errors aforesaid, and upon the record in said cause, pray that the said judgments and sentences against and upon them, the said Gus B. Greenbaum, Charles Greenbaum and William Greenbaum, under the indictment herein, may be reversed and held for naught.

ALEXANDER B. BAKER
LOUIS B. WHITNEY
LAWRENCE L. HOWE
THEODORE E. REIN

Attorneys for Defendants-Appellants

Due and legal service of a copy of the above and foregoing Assignment of Errors admitted this 4th day of January, 1935.

CLIFTON MATHEWS
United States District Attorney,
By F. E. FLYNN
Assistant United States District Attorney

[Endorsed]: Filed Jan 4 1935 [399]

[Title of Court and Cause.]

BAIL BOND PENDING APPEAL

KNOW ALL MEN BY THESE PRESENTS:
That we, Gus B. Greenbaum, as Principal, and Commercial Standard Insurance Company, a corporation organized and existing under and by virtue of the Laws of the State of Texas, and authorized

to do and transact a surety business in the State of Arizona and in the United States Courts within the State of Arizona, as Surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand and no/100 Dollars (\$5,000.00) to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our lawful successors and assigns, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the 5th day day of December, in the year of Our Lord, One Thousand Nine Hundred Thirty-four.

WHEREAS, lately at the October term, A. D. 1934, of the District Court of the United States for the District of Arizona, in a suit pending in said court between the United States of America, plaintiff and Gus B. Greenbaum, defendant, a judgment and sentence was rendered against the said Gus B. [400] Greenbaum, and the said Gus B. Greenbaum has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in the aforesaid suit, and notice of such appeal, in duplicate, having been filed with the Clerk of the District Court of the United States for the District of Arizona, and a copy of such Notice of appeal having been duly served upon the United States Attorney for the District of Arizona, in the manner, and within the time, required by law and the rules

of the court in such cases made and provided:

NOW the condition of the above obligation is such that if the said Gus B. Greenbaum shall appear in the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, California, on such day or days as may be appointed for the hearing of said cause in said court, and upon such day or days as may be appointed by said court until finally discharged therefrom, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said District Court of the United States for the District of Arizona against him shall be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation shall be void, else to remain in full force and effect.

GUS. B. GREENBAUM

Principal.

COMMERCIAL STANDARD INSURANCE
COMPANY OF DALLAS, TEXAS.

[Seal]

By I S LESSER
Its Attorney-in-fact.

APPROVED:

F. C. JACOBS

United States District Judge. [401]

[Endorsed]: Filed DEC 5 1934 [402]

[Title of Court and Cause.]

BAIL BOND PENDING APPEAL

KNOW ALL MEN BY THESE PRESENTS: That we, Charles Greenbaum, as Principal, and Commercial Standard Insurance Company, a corporation organized and existing under and by virtue of the Laws of the State of Texas, and authorized to do and transact a surety business in the State of Arizona and in the United States courts within the State of Arizona, as Surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand and no/100 Dollars (\$5,000.00) to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our lawful successors and assigns, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the 5th day day of December, in the year of Our Lord, One Thousand Nine Hundred Thirty-four.

WHEREAS, lately at the October term, A. D. 1934, of the District Court of the United States for the District of Arizona, in a suit pending in said court between the United States of America, plaintiff, and Charles Greenbaum, defendant, a judgment and sentence was rendered against the said Charles [403] Greenbaum and the said Charles Greenbaum has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in the

aforesaid suit, and notice of such appeal, in duplicate, having been filed with the Clerk of the District Court of the United States for the District of Arizona, and a copy of such Notice of appeal having been duly served upon the United States Attorney for the District of Arizona, in the manner, and within the time, required by law and the rules of the court in such cases made and provided:

NOW the condition of the above obligation is such that if the said Charles Greenbaum shall appear in the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, California, on such day or days as may be appointed for the hearing of said cause in said court, and upon such day or days as may be appointed by said court until finally discharged therefrom, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said District Court of the United States for the District of Arizona against him shall be affirmed by the said United States Circuit Court of Appeals for the Ninth Cir-

cuit, then the above obligation shall be void, else to remain in full force and effect.

CHARLES GREENBAUM
Principal.

COMMERCIAL STANDARD INSURANCE
COMPANY OF DALLAS, TEXAS.

[Seal] By I S LESSER
Its Attorney-in-fact.

APPROVED:

F. C. JACOBS
United States District Judge. [404]

[Endorsed]: Filed DEC 5 1934 [405]

[Title of Court and Cause.]

BAIL BOND PENDING APPEAL

KNOW ALL MEN BY THESE PRESENTS:
That we, William Greenbaum, as Principal, and Commercial Standard Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Texas, and authorized to do and transact a surety business in the State of Arizona and in the United States courts within the State of Arizona, as Surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand and no/100 Dollars (\$5,000.00) to be paid to the said United States of America, to which payment well and truly be made,

we bind ourselves, our lawful successors and assigns, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the 5th day of December, in the year of Our Lord, One Thousand and Nine Hundred Thirty-four.

WHEREAS, lately at the October term, A.D. 1934, of the District Court of the United States for the District of Arizona, in a suit pending in said court between the United States of America, plaintiff, and William Greenbaum, defendant, a judgment and sentence was rendered against the said William [406] Greenbaum, and the said William Greenbaum has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in the aforesaid suit, and notice of such appeal, in duplicate, having been filed with the Clerk of the District Court of the United States for the District of Arizona, and a copy of said Notice of Appeal having been duly served upon the United States Attorney for the District of Arizona, in the manner, and within the time, required by law and the rules of court in such cases made and provided:

NOW the condition of the above obligation is such that if the said William Greenbaum shall appear in the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, California, on such day or days as may be appointed for the hearing of said cause in said court, and upon such day or

days as may be appointed by said court until finally discharged therefrom, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said District Court of the United States for the District of Arizona against him shall be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation shall be void, else to remain in full force and effect.

WILLIAM GREENBAUM

Principal.

COMMERCIAL STANDARD INSURANCE
COMPANY OF DALLAS, TEXAS.

[Seal]

By I S LESSER
Its Attorney-in-fact.

APPROVED:

F. C. JACOBS

United States District Judge. [407]

[Endorsed]: Filed DEC 5 1934 [408]

[Title of Court and Cause.]

DEFTS PRAECIPE FOR RECORD
ON APPEAL

To the Clerk of the District Court of the United
States for the District of Arizona:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in the above entitled cause, and to include in such transcript of record the following:

- (1) The Indictment,
- (2) Motion of Gus B. Greenbaum to Quash Indictment.
- (3) Motion of Charles Greenbaum to Quash Indictment.
- (4) Motion of William Greenbaum to Quash Indictment.
- (5) Separate Demurrer of Gus B. Greenbaum.
- (6) Separate Demurrer of Charles Greenbaum.
- (7) Separate Demurrer of William Greenbaum.
- (8) Motion for New Trial.
- (9) Motion in Arrest of Judgment.
- (10) Notice of Appeal.
- (11) Clerk's Statement of Docket Entries.
- (12) Assignment of Errors (When Filed)
- (13) All Minute Entries therein. [409]

(14) Bill of Exceptions, when settled and approved by the Court and made a part of the Record.

(15) Certificate of the United States District Judge to Bill of Exceptions, and Order approving, settling, allowing and making the same a part of the Record herein.

(16) This Praecipe.

DATED at Phoenix, Arizona, this 11th day of December, 1934.

BAKER & WHITNEY
LAWRENCE L. HOWE
THEODORE E. REIN (W)

Attorneys for Appellants. 703 Luhrs Tower, Phoenix Arizona.

Service of the above praecipe acknowledged and accepted this 11th day of December, 1934.

CLIFTON MATHEWS
F. E. FLYNN

Attorneys for Appellee.

[Endorsed]: Filed DEC 11 1934 [410]

[Title of Court and Cause.]

PRAECIPE FOR ADDITIONAL PAPERS TO
BE INCLUDED IN THE TRANSCRIPT
OF RECORD.

To the Clerk of the District Court of the United States for the District of Arizona:

You are hereby requested to include in the transcript of record, in addition to that included in

the Praeceptum heretofore filed on the 11th day of December, 1934, the following:

1. Bail Bond Pending Appeal of Gus B. Greenbaum.
2. Bail Bond Pending Appeal of Charles Greenbaum.
3. Bail Bond Pending Appeal of William Greenbaum.
4. Judgment and sentence of each of the defendants Gus B., Charles and William Greenbaum.

Dated: at Phoenix, Arizona this 7th day of January, 1935.

ALEXANDER B. BAKER
LOUIS B. WHITNEY

LAWRENCE L. HOWE
THEODORE E. REIN (W)

Attorneys for Appellants. 703 Luhrs Tower Phoenix, Arizona.

Service of the above praecipe acknowledged and accepted this 7th day of January, 1935.

CLIFTON MATHEWS
F. E. FLYNN

Attorneys for Appellee [411]

[Endorsed]: Filed JAN 7 1935 [412]

CLERK'S CERTIFICATE TO
TRANSCRIPT OF RECORD

In the United States District Court for the
District of Arizona

United States of America
District of Arizona—ss:

I, J. LEE BAKER, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of United States of America, Plaintiff, versus A. E. Sanders, H. D. Sanders, Gus B. Greenbaum, Charles Greenbaum, and William Greenbaum, Defendants, numbered C-4879-Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 413 inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$75.90 and that said sum has been paid to me by counsel for the appellants.

WITNESS my hand and the Seal of the said Court
this 10th day of January, 1935.

[Seal]

J. LEE BAKER

Clerk. [413]

[Endorsed]: No. 7695. United States Circuit
Court of Appeals for the Ninth Circuit. Gus B.
Greenbaum, Charles Greenbaum and William Green-
baum, Appellants, vs. United States of America,
Appellee. Transcript of Record. Upon Appeal from
the United States District Court for the District of
Arizona.

Filed January 14, 1935.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit.